

# **Criminalising Dissent?**

**An Analysis of the Application of Criminal Law to Speech on  
the Internet through Case Studies**

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Since 2011, the Internet Democracy Project works for an Internet that supports freedom of expression, democracy and social justice, in India and beyond – through research, advocacy and dialogue.

## Table of Contents

Table of Contents .....	3
Introduction .....	5
Contestations around Free Speech on the Internet in India .....	9
Defamation: IIPM vs. Critics.....	17
Protecting the Government and National Symbols: Aseem Trivedi’s Cases .....	24
Intermediary Liability as well as Hate Speech Provisions Take 1: Vinay Rai’s Case .....	30
Hate Speech Provisions Take II: Shaheen Dhada’s Case .....	36
Morality and ‘Women’s Modesty’: The Air India, Ambikesh Mahapatra and Henna Bakshi Cases .....	40
Conclusion and Recommendations .....	47
Appendix A. Index of Cases.....	51



## Introduction

Over the past two years or so, news reports of people getting arrested for Facebook posts or tweets have managed to stir a public debate about laws governing the Internet in India. With the arrests of Ambikesh Mahapatra, Aseem Trivedi and Shaheen Dhada, the issue of criminalisation of online speech and expression has caught mainstream attention. But the shape and details of this phenomenon remain surprisingly underexamined. On which occasions does the application of criminal law stir controversies? Who are the actors involved in such cases? Despite growing concern, and with the exception of section 66A of the Information Technology (Amendment) Act, 2008 (henceforth the IT Act), remarkably little detailed information is available till date about the ways in which criminal law impacts free speech on the Internet in India.

There is reason for worry. In his report on the Internet and freedom of expression of June 2011, the UN Special Rapporteur on Freedom of Expression, Mr. Frank La Rue, expressed his concern that ‘legitimate online expression is being criminalised in contravention of States’ international human rights obligations, whether it is through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalise expression on the Internet’.<sup>1</sup> As governments across the political spectrum are increasingly seeking to assert control over the Internet, reports have seeped in from Thailand, over the UK, to Egypt, of bloggers, tweeters and other Internet users being charged, and sentenced, under criminal law.

While in certain exceptional cases criminal action may indeed be justified, there is, thus, a growing concern that with the new possibilities for free expression that the Internet allows, criminal law is increasingly being used to stifle legitimate expression, either because it offends, shocks or disturbs, or because it is disagreeable to governments or other powerful entities in society, or both. Seeing that criminal laws aim to function as severe deterrents – not only in their application but also through their mere existence – their increasing use, La Rue argues, can not only lead to a growing number of criminal sentences to penalise speech, but also to greater, and troubling, levels of self-censorship as Internet users fear coming into conflict with the law.

This study seeks to make a beginning to expanding our understanding of these issues in the Indian context. It examines in depth seven famous cases in which criminal law has controversially been drawn on in an attempt to stifle free speech on the Internet in the country.<sup>2</sup> In each case, victims faced threats

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<sup>1</sup> La Rue, Frank (2011). Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (A/HRC/17/27). Geneva, Human Rights Council, 16 May, paragraph 34.

<sup>2</sup> The authors would like to thank all those who spoke to us about the cases discussed here, including parties to the cases, some of whom have been identified in this paper. While it is not possible to mention them by name, we also thank our industry sources for providing valuable information. In addition, we would like to thank all participants in the *Round Table on Strengthening Freedom of Expression on the Internet in India*, organised by the Internet Democracy Project in

of prosecution, actual arrests or lawsuits, under either the IT Act or various sections of the Indian Penal Code (IPC), for content that they had posted online.

By focusing on these high-profile cases, we hope to unearth more information about:

- which are the most controversial grounds for criminalisation
- in what circumstances are these laws mobilised
- who are the political and/or social forces who drive their contentious use.

The focus on contentious cases is, of course, not to say that the use of criminal law in other instances is necessarily unproblematic. As UN Special Rapporteur on Freedom of Expression, Frank La Rue, has pointed out, ‘imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the legitimate aims under article 19, paragraph 3 of the ICCPR’.<sup>3</sup> But by starting to unearth some of the central points of conflict in this regard where the Internet is concerned, this study hopes to contribute to more effective future advocacy and action in this field as a whole.

This research – including the selection of the cases to be discussed in depth – was conducted in a two-step process. In the first instance, as our assumption was that contentious cases would be reported in the media, any mention of a relevant case that we came across in a media report was added to a table that became an Index of Cases. Where possible, descriptions of cases as gleaned from media reports were supplemented with information available in online legal archives. The complete Index of Cases can be found in Appendix A.

The focus of the Index is on cases from the past five years. However, as it soon became clear that the Index could be a useful resource for others to draw on as well, we decided to also include several landmark cases that are considerably older. For example, the Delhi Public School case, which resulted in the Chief Executive of baazee.com getting jailed, was extremely important in shaping the debate on intermediary liability. This case dates back to the year 2004. Also, not all cases included resulted in prosecution. For example, veteran journalist Barkha Dutt’s legal notice to blogger Chaitanya Kunte did not result in an actual complaint or lawsuit; we decided to include this case anyway because this development sparked a fierce debate on free speech in online circles.

Even though the list is not exhaustive, to our knowledge it is the only attempt to collate such a large number of cases as discussed or reported in the media so far. All cases included are from India, although parties involved in some cases are based abroad.

The exercise of building the Index in itself provided some interesting insights. We had identified beforehand five probable grounds on which speech would be contentiously criminalised, and had aimed to attribute to each case one main ground. These grounds were hate speech, security (be it cyber

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Bangalore on 9 April, 2013, for their valuable feedback. In particular, we would like to thank Adv. Karuna Nundy and Adv. Apar Gupta for providing detailed clarifications on the functioning of the Indian legal system.

<sup>3</sup> La Rue, Frank (2011), Op. cit., paragraph 36.

security or national security), defamation, obscenity, and hurting religious feelings. However, interestingly, there were very few cases in which security reasons emerged as a stated ground for the invocation of criminal law. At the same time, the number of defamation cases was very high. Many cases could fit into more than one category.

One should, however, be careful to draw any conclusions regarding the pervasiveness of the problems indicated from the Index. For example, a possible explanation for the large number of defamation cases could simply be that these often involve powerful entities and that it is for this reason that such cases easily become the subject of news. Thus, while the Index of Cases provides a sense of the range of issues that the application of criminal law to online expression raises, it does not allow drawing any conclusions regarding their individual prevalence.

In the second stage of the research, a limited number of cases listed in the Index were then studied in greater depth. The main driver for the selection of these particular cases was the diversity and importance of the issues or questions raised by each of them. What was the particular contribution that this case had made to the debate? In line with our aim of mapping the most contentious aspects of criminal law in India as it relates to online speech, it was this question that primarily guided our choices.

News sources were used as preliminary sources of information for the analysis of the cases. Legal documents were accessed wherever available. An attempt was made to reach all parties involved in each case but this was not always possible. Where telephonic or email conversations with the parties involved are reproduced in part or in full, this is with their knowledge and permission.

We then used the in-depth description of each case as an opportunity to examine the various laws that each case draws on and to investigate whether the wording of some of the clauses is problematic.

Seven cases were selected in this manner, and the bulk of the remainder of this report is devoted to their analysis. The IIPM case is an example of how defamation law can be used to create a chilling effect on critics to prevent dissemination of truth that is in the public interest and how it can also be harmful for investigative journalism. The Aseem Trivedi case illustrates how artistic freedom and political criticism can be curbed in the name of the national interest, respect for national symbols and so on. The case involving Vinay Rai shows how anyone can set the law into motion without going through due process. It raises important questions regarding the legal framework for intermediaries in India, as well regarding some of the challenges that laws intended to ensure the peaceful coexistence of India's many communities pose in the Internet era. These challenges are further expanded on when discussing the Shaheen Dhada case, which also raises important questions regarding what is private and what is public on the Internet. Finally, the cases of Ambikesh Mahapatra, KV Rao and colleague and of Henna Bakshi are used to highlight the perverted use to which obscenity provisions are sometimes put in the context of complaints that seem aimed at settling scores or 'teaching someone a lesson.'

Two further points on inclusions and exclusions from the study deserve to be made here. First, defamation suits can be either criminal or civil in nature: where there is a civil suit, there is usually a

claim for damages; a criminal complaint for defamation can result in both jail and in fine. IIPM has used both as a strategy, and although this paper strictly speaking deals with the criminalisation of speech, both will be discussed here. This is because to illustrate the full impact of these sections on freedom of expression, it is essential to provide the context in which the criminal complaint needs to be seen: a series of civil defamation suits for extremely high amounts, often filed in remote parts of the country against critics of the institution. Such practices amount to what is known as SLAPP suits (strategic lawsuits against public participation) and are a common and, unfortunately, fairly effective method to stifle criticism, to which criminal defamation complaints add further force.

Second, it deserves to be noted here that it is also increasingly common to use a combination of intellectual property rights (IPR) legislation and IPC provisions, especially defamation law, to claim disproportionate amounts as damages and also to block and censor content. This combination of IPR legislation and IPC provisions to obtain private injunctions and to claim damages is emerging as a new form of censorship. In the Tata vs Turtle case, for example, business group Tata sued Greenpeace for an amount of Rs. 100 million, on grounds of defamation and copyright infringement. Greenpeace, as part of a campaign targeted at Tata, had used Tata's logo in an online spoof game criticising its practices that, Greenpeace argued, were harmful to sea life.<sup>4</sup> However, because of the relatively recent emergence of this strategy and because of the fact that it has received relatively little media attention so far, IPR is not discussed in this study. We recommend separate research on this issue.

Throughout the analysis of the seven cases that we will be discussing in this study, weaknesses of legal provisions, including the now infamous section 66A of the IT Act will be highlighted. Broader procedural challenges will receive ample attention as well. However, before we start this detailed examination, it is important to provide an overview of the background against which our analysis has to be understood. When and how did online free speech in India become such a contested topic?

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<sup>4</sup> See also Appendix. A of this paper, Index of Cases, for more detail.

## Contestations around Free Speech on the Internet in India

Internet use in India is increasing, and so is the number of cases filed, year-on-year, under the laws governing various Internet crimes. What can the figures tell us?

According to the National Crime Records Bureau (NCRB) report, 1791 cases were reported under the IT Act in 2011. This marks an 85.4 percent increase over the previous year. In addition, 422 cases registered under the IPC involved the use of computers and were also treated as cyber crimes.<sup>5</sup> But the extent to which these figures refer to cases that could potentially concern freedom of expression, unfortunately, remains unclear.

**Cyber Crimes/Cases Registered and Persons Arrested under IT Act during 2008 - 2011**

SL. NO.	Crime Heads	Cases Registered				% Variation in 2011 over 2010	Persons Arrested				% Variation in 2011 over 2010
		2008	2009	2010	2011		2008	2009	2010	2011	
1	Tampering computer source documents	26	21	64	94	46.9	26	6	79	66	-16.5
2	Hacking with Computer System										
	i) Loss/damage to computer resource/utility	56	115	346	826	138.7	41	63	233	487	109.0
	ii) Hacking	82	118	164	157	-4.3	15	44	61	65	6.6
3	Obscene publication/transmission in electronic form	105	139	328	496	51.2	90	141	361	443	22.7
4	Failure										
	i) Of compliance/orders of Certifying Authority	1	3	2	6	200	1	2	6	4	-33.3
	ii) To assist in decrypting the information intercepted by Govt. Agency	0	0	0	3	-	0	0	0	0	@
5	Un-authorized access/attempt to access to protected computer system	3	7	3	5	66.7	0	1	16	15	-6.3
6	Obtaining licence or Digital Signature Certificate by misrepresentation/suppression of fact	0	1	9	6	33.3	11	0	1	0	-100
7	Publishing false Digital Signature Certificate	0	1	2	3	50.0	0	0	0	1	-
8	Fraud Digital Signature Certificate	3	4	3	12	300.0	3	0	6	8	33.3
9	Breach of confidentiality/privacy	8	10	15	26	73.3	3	3	5	27	440.0
10	Other	4	1	30	157	423.3	0	0	0	68	-
	<b>Total</b>	<b>288</b>	<b>420</b>	<b>966</b>	<b>1791</b>	<b>85.4</b>	<b>154</b>	<b>178</b>	<b>288</b>	<b>1184</b>	<b>311.1</b>

Note: @ denotes infinite percentage variation because of division by zero

Table 1. Cyber Crimes/Cases Registered and Persons Arrested under IT Act during 2008-2011<sup>6</sup>

As Table 1, above, illustrates, in 2008 and 2009, cases related to ‘obscene publication/transmission in electronic form’ formed the highest fraction of cases registered under the IT Act (36 percent and 33 percent respectively). These could potentially be free speech cases. While in 2010 and 2011, the

<sup>5</sup> National Crime Records Bureau (2012). *Crime in India 2011 Report*. New Delhi: National Crime Records Bureau, <http://ncrb.nic.in/CD-CII2011/cii-2011/Chapter%2018.pdf>.

<sup>6</sup> Ibid., p. 175.

importance of this category was surpassed by that of cases related to ‘loss/damage to computer resource/utility’ (35 percent and 46 percent respectively), the number of obscenity cases continued to rise, with 2011 seeing a 51 percent increase over the previous year.

To what extent freedom of expression might also be implicated in other categories listed in this table remains, however, unclear. Moreover, as Table 2, below, illustrates, where IPC sections applied to cybercrime are concerned, the NCRB report is even less helpful. Though possibly the most authoritative source on this issue, the NCRB report does not contain enough information on cybercrime related cases to draw any conclusions about the effect of criminal law on free speech.

**Cyber Crimes/Cases Registered and Persons Arrested under IPC during 2008-2011**

SL. NO.	Crime Heads	Cases Registered				% Variation in 2011 over 2010	Persons Arrested				% Variation in 2011 over 2010
		2008	2009	2010	2011		2008	2009	2010	2011	
1	Offences by/Against Public Servant	0	0	2	7	133.8	0	0	3	3	0.0
2	False electronic evidence	1	0	3	1	-66.7	0	0	4	1	-75
3	Destruction of electronic evidence	0	3	1	9	800	0	0	0	10	@
4	Forgery	55	158	188	259	37.8	61	161	257	277	7.8
5	Criminal Breach of Trust/Fraud	79	90	146	118	19.1	96	79	100	129	29
6	Counterfeiting										
	i) Property/mark	17	1	1	6	500	20	3	2	8	300
	ii) Tampering	3	3	8	5	-37.5	0	0	12	7	-41.6
	iii) Currency/Stamps	21	21	7	17	142.8	18	20	16	11	-31.3
7	<b>Total</b>	<b>176</b>	<b>276</b>	<b>356</b>	<b>422</b>	<b>18.5</b>	<b>195</b>	<b>263</b>	<b>394</b>	<b>446</b>	<b>13.2</b>

Note: @ denotes infinite percentage variation because of division by zero

Table 2. Cyber Crimes/Cases Registered and Persons Arrested under IPC during 2008-2011<sup>7</sup>

While numerous arrests have been made in cybercrime related cases, reports indicate that the conviction rate so far under the IT law, which was enacted in 2000 and amended in the year 2008, remains very low.<sup>8</sup>

This could be explained by several factors. Several cases may be ongoing, given the fact that the law is new and the judicial process slow. Lack of proper evidence and evidence-gathering techniques could be an important factor.<sup>9</sup> Besides this, some of the laws themselves may be overly broad or problematic in other ways, allowing arrests where none should be made.<sup>10</sup> Overreach by law-enforcement agencies

<sup>7</sup> Ibid., table 18(B), Chapter 18, p. 179.

<sup>8</sup> - (2012). ‘Cyber Crime: 1600 arrested, only 7 convicted’. *Rediff*, 11 December, <http://www.rediff.com/business/report/tech-cyber-crime-1600-arrested-only-7-convicted/20121211.htm>.

<sup>9</sup> Menon S. (2009). ‘The conviction rate for cyber crime is zilch in Bangalore’. *DNA*, 8 December, [http://www.dnaindia.com/bangalore/report\\_the-conviction-rate-for-cyber-crime-is-zilch-in-bangalore\\_1321339](http://www.dnaindia.com/bangalore/report_the-conviction-rate-for-cyber-crime-is-zilch-in-bangalore_1321339).

<sup>10</sup> Vij S. (2013). ‘This troll has a very long nose’. *Outlook*, 21 January, <http://www.outlookindia.com/article.aspx?283530>; Vembu V. (2012). ‘Aseem Trivedi, and the case for repeal of sedition law’. *Firstpost*, 11 September, <http://www.firstpost.com/india/aseem-trivedi-and-the-case-for-repeal-of-sedition-law-450796.html>; Liang L. (2012). ‘The process is the bloody punishment’. *Kafila*, 25 January, <http://kafila.org/2012/01/25/the-process-is-the-bloody-punishment/>.

cannot be ruled out either, as they are believed to have acted under pressure in certain cases.<sup>11</sup> For example, professor Ambikesh Mahapatra was arrested overnight for criticising the Chief Minister of his state; cartoonist Aseem Trivedi was arrested for publishing cartoons against corruption in India that were highly critical of the government; small-scale industrialist S Ravi was arrested on the basis of a mere email from a senior Minister's son; two girls in Mumbai were arrested under pressure from Shiv Sena members. In all of these cases, as will be discussed later in this report, some or all of the charges were dropped later, indicating that there was overreach initially.<sup>12</sup>

While the NCRB data may not shed much further light on the matter, that both the law and law enforcement might affect freedom of expression on the Internet negatively was widely recognised following the arrest of Shaheen Dhada and her friend in Mumbai; the young women were arrested because the former had written a Facebook post questioning a shutdown of Mumbai after a local political leader passed away and the latter had liked, commented on and shared the post (more detail on this later). Following their widely criticised arrest, the Department of Electronics and Information Technology, on the initiative of the IT Minister, issued 'tougher' guidelines for arrests to be made under the controversial section 66A of the IT Act;<sup>13</sup> India's Supreme Court admitted a public interest litigation challenging the constitutionality of the particular section;<sup>14</sup> Aseem Trivedi, the cartoonist who was booked under section 66A, went on hunger strike for over a week;<sup>15</sup> a government-owned telecom provider's website was hacked by hacktivist collective *Anonymous* in support of Aseem Trivedi's fast;<sup>16</sup> and the Indian Parliament took up a discussion on section 66A.<sup>17</sup>

The events surrounding section 66A of the IT Act played a crucial role in drawing mainstream attention toward and galvanising support for the movement against Internet censorship, and section 66A will be

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<sup>11</sup> - (2012). 'Shaheen Dhada's arrest triggered by pressure from Shiv Sainiks'. *Economic Times*, 21 November, [http://articles.economictimes.indiatimes.com/2012-11-21/news/35256304\\_1shiv-sainiks-police-station-day-long-bandh](http://articles.economictimes.indiatimes.com/2012-11-21/news/35256304_1shiv-sainiks-police-station-day-long-bandh);

- (2012). 'Rights panel summons police commissioner over professor's arrest'. *Times of India*, 20 June, [http://articles.timesofindia.indiatimes.com/2012-06-20/kolkata/32334996\\_1trinamool-congress-police-action-police-commissioner](http://articles.timesofindia.indiatimes.com/2012-06-20/kolkata/32334996_1trinamool-congress-police-action-police-commissioner).

<sup>12</sup> - (2012). 'Arrest of a girl over Thackeray FB update a clear misuse of Sec 295A'. *Firstpost*, 19 November, <http://www.firstpost.com/india/arrest-of-girl-over-thackeray-fb-update-clear-misuse-of-sec-295a-527779.html>;

- (2012). 'Rights panel wants Rs 50K compensation for Jadavpur University professor'. *Times of India*, 14 August, [http://articles.timesofindia.indiatimes.com/2012-08-14/kolkata/33200041\\_1jadavpur-university-professor-amit-sardar-ambikesh-mahapatra](http://articles.timesofindia.indiatimes.com/2012-08-14/kolkata/33200041_1jadavpur-university-professor-amit-sardar-ambikesh-mahapatra);

Editorial (2012). 'Sedition? Seriously?' *The Hindu*, 11 September,

<http://www.thehindu.com/opinion/editorial/article3882414.ece>; Arora K. (2012). 'Outcry over man's arrest for tweets against Chidambaram's son'. *Times of India*, 1 November, [http://articles.timesofindia.indiatimes.com/2012-11-01/social-media/34856365\\_1tweets-free-speech-computer-resource](http://articles.timesofindia.indiatimes.com/2012-11-01/social-media/34856365_1tweets-free-speech-computer-resource).

<sup>13</sup> See [http://deity.gov.in/sites/upload\\_files/dit/files/Advisoryonsection.pdf](http://deity.gov.in/sites/upload_files/dit/files/Advisoryonsection.pdf).

<sup>14</sup> Sinha B. (2012). 'SC slams Facebook arrests, takes up 66A'. *Hindustan Times*, 29 November, <http://www.hindustantimes.com/India-news/NewDelhi/SC-slams-Facebook-arrests-takes-up-66A/Article1-965852.aspx>.

<sup>15</sup> - (2012). 'Cartoonist Aseem Trivedi ends eight-day fast'. *Times of India*, 15 December, [http://articles.timesofindia.indiatimes.com/2012-12-15/india/35836338\\_1cartoonist-aseem-trivedi-sedition-charges-trivedi-today](http://articles.timesofindia.indiatimes.com/2012-12-15/india/35836338_1cartoonist-aseem-trivedi-sedition-charges-trivedi-today).

<sup>16</sup> Arora K. (2012). 'BSNL website hacked by Anonymous India', *Times of India*, 13 December, [http://articles.timesofindia.indiatimes.com/2012-12-13/telecom/35796382\\_1bsnl-website-aseem-trivedi-sec-66a](http://articles.timesofindia.indiatimes.com/2012-12-13/telecom/35796382_1bsnl-website-aseem-trivedi-sec-66a).

<sup>17</sup> - (2012). 'Rajya Sabha takes up discussion on Section 66A of IT Act'. *IBNLive*, 14 December, <http://ibnlive.in.com/news/rajya-sabha-takes-up-discussion-on-section-66a-of-it-act/310422-37-64.html>.

a consistent presence throughout this paper. The provision allows for the arrest of any person who ‘sends messages that are grossly offensive or of a menacing character’ and false messages that cause ‘annoyance or inconvenience’, among other things. As we will detail later in this paper, the wording of the provision has come under serious criticism as it is overly broad and gives wide powers of arrest to the police who may not even understand social media and political satire very well.

But section 66A of the IT Act is not the only provision that is used to silence legitimate speech on the Internet in India, and the obvious sense of alarm caused by arrests under section 66A needs to be understood against the backdrop of wider concerns over India’s censorship of the online space.<sup>18</sup>

Free speech activists across the country were deeply alarmed when the New York Times reported that Kapil Sibal, Minister for Communications and Information Technology, had asked Facebook, Google, Microsoft, Yahoo! and the India Times Group to prescreen user content from India and to remove disparaging, inflammatory or defamatory content before it goes online.<sup>19</sup>

Google's Transparency Report provides some insight into the number and the nature of takedown requests received from the government or its agencies, police departments, courts, etc. While the number of content removal requests that the Government of India (including courts, police, etc.) made to Google was considerably lower in 2012 than in 2009, and while the fraction of requests that is backed up by a court order seems to be on the increase, the fact remains that the overwhelming majority of these requests continue to be made by the police or government officials without the courts' backing (see Figure 1).<sup>20</sup>

Interestingly, in line with our analysis of the Index of Cases, the top reason cited by the government for content removal requests was not security, not even hate speech, but defamation, with more than 40 % of all requests since July 2010 citing that reason. Court orders could have resulted from private disputes or from disputes involving the government or politicians – the report does not make a distinction or provide any break up (see Figure 2).

Google clearly hasn't been convinced by the legitimacy of these requests, as its compliance rate has gone down drastically over the years, from 77 percent in December 2009 to around 30 percent more recently.

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<sup>18</sup> MacKinnon R. (2012). ‘The War for India’s Internet’. *Foreign Policy*, 6 June, [http://www.foreignpolicy.com/articles/2012/06/06/the\\_war\\_for\\_india\\_s\\_internet](http://www.foreignpolicy.com/articles/2012/06/06/the_war_for_india_s_internet).

<sup>19</sup> Timmons H. (2011). ‘India Asks Google, Facebook to Screen User Content’. *New York Times*, 5 December, <https://india.blogs.nytimes.com/2011/12/05/india-asks-google-facebook-others-to-screen-user-content/>.

<sup>20</sup> One should also be cautious to read into Google's figures an indication of a positive change in the government's approach to these issues because information about content removal requests from other intermediaries, in particular those based in India, is still not available. A decrease in the number of government requests might indicate a displacement, rather than an actual reduction in the total number of requests made.

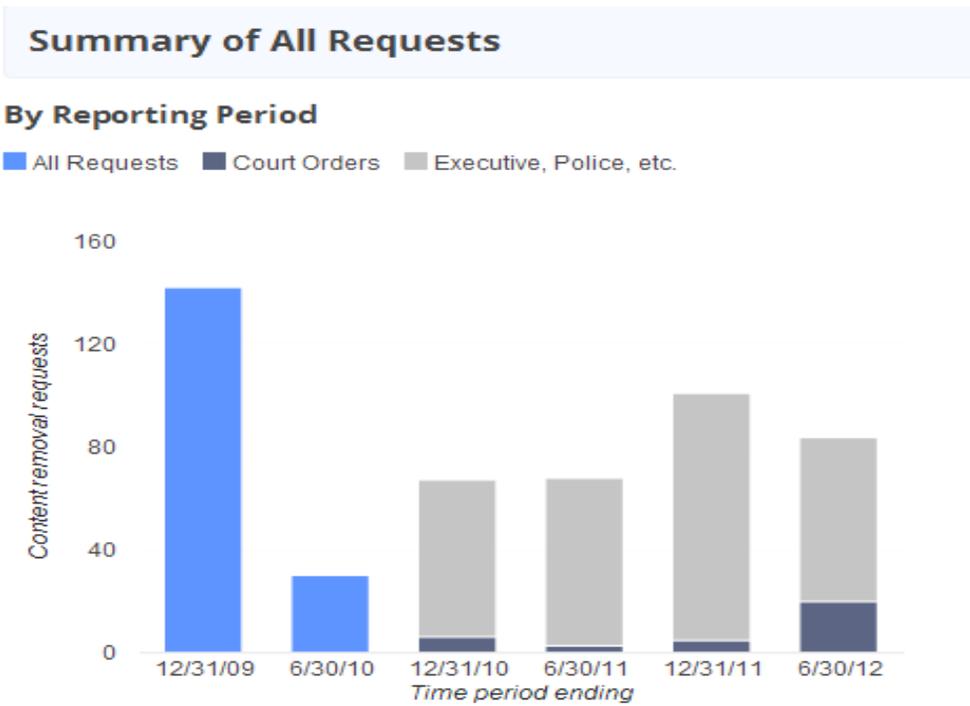


Figure 1. Summary of All Content Removal Requests Received by Google from the GoI, By Reporting Period<sup>21</sup>



Figure 2. Summary of All Content Removal Requests Received by Google from the GoI since July 2010, By Reason<sup>22</sup>

<sup>21</sup> Source: <https://www.google.com/transparencyreport/removals/government/IN/>. Retrieved on 2 April, 2013.

Other instances of government-ordered blocks have been reported. In 2012, as renewed violence between Muslims and Bodos, an indigenous tribe, in India's Northeastern state of Assam coincided with an escalation of violence between Rohingya Muslims and Buddhists in Myanmar, this opportunity was used by some to spread rumours among India's Muslims about massacres that had never happened.<sup>23</sup> For example, one Urdu publication passed off an image of a Tibetan monk standing beside piles of corpses after an earthquake in 2010 in eastern Tibet as the picture of a Buddhist monk in Myanmar after what was described as mass murder of Rohingya Muslims. The wrongly-contextualised picture was widely shared on Facebook and is believed to have sparked a fury among Muslims, ultimately leading to threatening text messages and, it is believed, a mass exodus<sup>24</sup> of Northeastern Indians from Bangalore and some other cities of India.<sup>25</sup> To arrest the further spread of rumors, the government banned mass SMS<sup>26</sup> and issued plain paper orders to Internet service providers (ISPs) directing them to block a host of URLs, without citing any sections of the IT Act or of the IPC.<sup>27</sup>

In doing so, the government was exercising its powers under section 69A of the IT Act, 'power to issue directions for blocking for public access of any information through any computer resource': the blocking rules under that section – formally known as the 'Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules 2009' – do not require the government to issue anything more than plain paper orders, nor does the government have to accord a reason for the blocking order or cite any provisions of law. An analysis of the blocked URLs shows, however, that many of these URLs ought not to have been censored: this includes the Twitter handles of several right-leaning journalists and groups, besides a parody account of the Prime Minister.<sup>28</sup>

Though the above incident was said to have been the first time that the government resorted to using its powers under section 69A, since then it has done so again on several occasions. In November 2012, it blocked access to 240 URLs related to a film that is believed to have hurt the religious sentiments of

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<sup>22</sup> Ibid.

<sup>23</sup> Mondal S. (2012). 'The deadly bite of fabricated "reportage"'. *The Hindu*, 19 August, <http://www.thehindu.com/todays-paper/tp-miscellaneous/tp-others/article3793941.ece>.

<sup>24</sup> - (2012). 'Indians from Assam flee "Muslim threats" in Bangalore'. *The Guardian*, 16 August, <http://www.guardian.co.uk/world/2012/aug/16/indians-assam-muslim-threats-bangalore>.

<sup>25</sup> - (2012). '20-yr-old held for forwarding hate SMS', *Times of India*, 20 August, [http://articles.timesofindia.indiatimes.com/2012-08-20/coimbatore/33287262\\_1\\_communal-harmony-police-inspector-minority-community](http://articles.timesofindia.indiatimes.com/2012-08-20/coimbatore/33287262_1_communal-harmony-police-inspector-minority-community).

<sup>26</sup> Shah S. (2012). 'India Bans Mass SMS to Counter Panic'. *WSJ*, 17 August, <http://blogs.wsj.com/indiarealtime/2012/08/17/indian-bans-mass-sms-to-counter-panic/>. Though users initially were able to send only a maximum of five SMSes per day under the ban, a week later the limit was raised to twenty SMSes per day. See Ghosh S. (2012). 'SMS limit increased from 5 to 20 per day with immediate effect'. *NDTV*, 23 August, <http://www.ndtv.com/article/india/sms-limit-increased-from-5-to-20-per-day-with-immediate-effect-258432>.

<sup>27</sup> These can be found on the site of the *Economic Times*. See <http://economictimes.indiatimes.com/photo.cms?msid=15618002>; <http://economictimes.indiatimes.com/photo.cms?msid=15618019>; <http://economictimes.indiatimes.com/photo.cms?msid=15618032>; <http://economictimes.indiatimes.com/photo.cms?msid=15618036>. Retrieved on 2 February, 2013.

<sup>28</sup> Prakash P. (2012). 'Haphazard censorship? Leaked list of blocked websites in India'. *CIS India*, 23 August, <http://cis-india.org/news/www-ibnlive-in-com-haphazard-censorship-leaked-list-of-blocked-sites>.

Muslims.<sup>29</sup> In February 2013, the Department of Telecom (DoT), following a court order, issued an order to all ISPs to block 78 URLs, 73 of which were related to a business school called the Indian Institute of Planning and Management (IIPM).<sup>30</sup> At about the same time, the DoT also asked ISPs to block 55 URLs, mostly Facebook pages related to Afzal Guru, a Kashmiri hanged in connection with the Parliament attack case.<sup>31</sup>

Take-down requests received by Google, Facebook, etc. are made under a host of provisions including, but not limited to, the Intermediaries Guidelines under section 79 of the IT Act, also commonly known as the IT Rules of 2011. The IT Rules require Internet intermediaries to ‘act within thirty six hours’ of being notified about content that is ‘obscene,’ ‘harassing,’ ‘libelous,’ ‘hateful,’ ‘harms minors’ or ‘infringes copyright’ – or risk prosecution.<sup>32</sup> As will be discussed later in this report, examples of intermediaries being prosecuted for content hosted on their websites do exist. There is therefore a considerable threat that companies might comply with such orders without questioning, in order to avoid prosecution. There is also apprehension that the very existence of such laws may force the public at large into self-censorship. A ‘policy sting operation’ by the Centre for Internet & Society (CIS), Bangalore, showed that six out of seven intermediaries complied with frivolous and fraudulent complaints.<sup>33</sup>

Industry sources report that procedural provisions like sections 91 and 144 of the Criminal Procedure Code (CrPC) are also often cited in takedown notices, on pretexts such as ‘gathering evidence’ and ‘maintaining public order’ respectively. Section 91 requires any person in possession of a document or thing that is required in an investigation, inquiry, trial or other proceeding to produce such document or thing upon a summons or written order by a Court or police officer in charge of a police station respectively. Section 144 provides District Magistrates, Sub-divisional Magistrates and other Executive Magistrates thus empowered by the State government to ‘issue order in urgent cases of nuisance or apprehended danger’, i.e. where such direction ‘is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray’. Offline, section 144 is frequently used in situations in which public order is perceived to be under threat.

India was ranked 131st out of 179 countries in the 2011-2012 Reporters Without Borders (RSF) Press Freedom Index.<sup>34</sup> In the 2013 report, India has slipped nine places further down.<sup>35</sup> India was also added

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<sup>29</sup> - (2012). ‘Government blocks 240 weblinks related to provocative film’. *NDTV*, 1 November, <http://gadgets.ndtv.com/internet/news/government-blocks-240-weblinks-related-to-provocative-film-287053>.

<sup>30</sup> Shora S. (2013). ‘DoT blocked URLs- Analysis and History’. *Internet Democracy Project*, 15 February, <http://www.internetdemocracy.in/2013/02/15/dot-blocked-websites-analysis-and-history/#more-595>.

<sup>31</sup> Dougal S. (2013). ‘55 More Facebook URLs DoT Wants Blocked’. *Outlook*, 18 February, <http://www.outlookindia.com/article.aspx?283960>.

<sup>32</sup> Notification. *The Gazette of India: Extraordinary* [Part II-Sec. 3(i)]. New Delhi, 11 April, 2011, [http://deity.gov.in/sites/upload\\_files/dit/files/GSR314E\\_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR314E_10511(1).pdf). Retrieved on 2 February, 2013.

<sup>33</sup> Dara R. (2011). *Intermediary Liability in India: Chilling Effects on Free Expression on the Internet*. Bangalore: CIS India, <http://cis-india.org/internet-governance/intermediary-liability-in-india.pdf>.

<sup>34</sup> Press Freedom Index 2011/2012, *RSF*, [http://en.rsf.org/press-freedom-index-2011-2012\\_1043.html](http://en.rsf.org/press-freedom-index-2011-2012_1043.html). Retrieved on 30 March, 2013.

to the list of countries ‘under surveillance’ in the RSF survey of ‘Enemies of the Internet’ released in March 2012. For purposes of comparison, other countries in the ‘under surveillance’ category include Russia, Kazakhstan, Malaysia and Sri Lanka.

According to a further RSF report, the Indian government publicly denies accusations of heightened censorship post the 26/11 attacks on Mumbai.<sup>36</sup> However, even as the government denies accusations of Internet censorship, the IT Minister, Mr. Kapil Sibal, has repeatedly said that the online is different from the offline and, hence, needs to be treated differently. The most recent instance of him saying so was on 6 March, 2013, when a resolution against section 66A of the IT Act was taken up for discussion in the Parliament.<sup>37</sup> That the government treats the online different from the offline supports accusations that a new censorship regime has been put into place.

As stated at the beginning of this paper, a detailed investigation of this new landscape so far has, however, been missing. Is the government indeed the primary actor in this new landscape, as often seems to be imputed in media reports? Apart from takedowns and blocks, does it resort to arresting people as well? And who pays the price for any changes to the censorship regime that are being made?

This study seeks to make a beginning to answering some of these questions by analysing in greater detail seven cases that received widespread public attention for the misuse of criminal law to the detriment of freedom of expression. It is to these cases that we turn our attention now.

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<sup>35</sup> ‘2013 World Press Freedom Index: dashed hopes after spring’, *RSF*, <http://en.rsf.org/press-freedom-index-2013,1054.html?dolist=ok/press-freedom-index-2013,1054.html>. Retrieved on 30 March, 2013.

<sup>36</sup> ‘Ever since the 2008 Bombay attacks, the authorities have been intensifying their Internet surveillance and pressure on technical service providers while publicly denying censorship accusations’. In ‘India’, *RSF*, <http://en.rsf.org/india-india-12-03-2012,42074.html>. Retrieved on 3 February, 2013.

<sup>37</sup> Pahwa N. (2013). ‘Resolution Challenging Section 66A In Parliament Withdrawn’. *Medianama*, 6 March, <http://www.medianama.com/2013/03/223-resolution-challenging-section-66a-in-parliament-withdrawn/>.

## Defamation: IIPM vs. Critics

The Indian Institute of Planning and Management (IIPM) is a privately run business school with its main campus in Delhi and eighteen branches across India.<sup>38</sup> Arindam Chaudhuri, who is the honorary dean of IIPM, has become synonymous with the institution's name ever since he started projecting IIPM as the premier business school of India, with the well-known tagline 'Dare to think beyond the IIMs'. The Indian Institutes of Management or IIMs are a group of thirteen, publicly run yet autonomous management schools; they are regarded as the premier management schools of India known to attract talent through a highly competitive examination.<sup>39</sup> IIPM, with its relatively easier admission process, managed to tap into the 'corporate dream' harboured by thousands of young Indians.<sup>40</sup> At the same time, IIPM has its fair share of critics due to some of its allegedly questionable practices.<sup>41</sup>

In 2009, Maheshwar Peri, editor of *Careers360* magazine and publisher of *Outlook* magazine faced a complaint of criminal defamation by IIPM over a 2008 article in *Outlook* written by Peri, which was first in a series of articles through which he sought to expose bogus universities that had cropped up in various parts of the country and which were defrauding students.<sup>42</sup>

A few other articles in the series were in the offing. For example, 'IIPM - Best Only in Claims?' was published later in *Careers360*.<sup>43</sup> The latter article reported, among other things, that while IIPM claimed that its students were eligible for MBA degrees from the International Management Institute (IMI), Belgium, the Accreditation Organisation of the Netherlands and Belgium did not recognise IMI. Also it reported that following a local agitation against the opening of a new campus in Dehradun, the state government of Uttarakhand had asked the Uttarakhand Technical University to conduct an enquiry into the activities of IIPM, with which IIPM did not co-operate.<sup>44</sup> The investigations revealed that IIPM could not in any circumstances award valid MBA/BBA degrees or conduct such courses in the state of Uttarakhand. All the articles that appeared in *Careers360* were, however yet to appear when

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<sup>38</sup> Indian Institute of Planning & Management, *Wikipedia*, [http://en.wikipedia.org/wiki/Indian\\_Institute\\_of\\_Planning\\_and\\_Management](http://en.wikipedia.org/wiki/Indian_Institute_of_Planning_and_Management). Retrieved on 5 February, 2013.

<sup>39</sup> 'India's Top 50 B-Schools, A perception survey by Hindustan Times', *Hindustan Times*, <http://www.hindustantimes.com/Images/HTEditImages/Images/top-50-business-school.jpg>. Retrieved on 5 February, 2013.

<sup>40</sup> - (2010). 'IIPM makes record 10,000 placements in five years'. *DNA*, 22 June, [http://www.dnaindia.com/academy/report\\_iipm-makes-record-10000-placements-in-five-years\\_1399621](http://www.dnaindia.com/academy/report_iipm-makes-record-10000-placements-in-five-years_1399621).

<sup>41</sup> IIPM, Controversies, *Wikipedia*, [http://en.wikipedia.org/wiki/Indian\\_Institute\\_of\\_Planning\\_and\\_Management#Controversies](http://en.wikipedia.org/wiki/Indian_Institute_of_Planning_and_Management#Controversies). Retrieved on 5 February, 2013.

<sup>42</sup> Peri M. (2008). 'Racket Game Lobs'. *Outlook*, 30 June, <http://www.outlookindia.com/article.aspx?237792>.

<sup>43</sup> Sarma B. M. (2009). 'IIPM - Best only in claims?'. *Careers360 Magazine*, 3 April, <http://www.careers360.com/news/3067-IIPM-Best-only-in-claims>.

<sup>44</sup> - (2010). 'IIPM: Uttarakhand Registrar recommends a ban'. *Careers360 Magazine*, 11 March, <http://www.careers360.com/news/3957-IIPM-Uttarakhand-Registrar-recommends-a-ban>.

the criminal complaint over the 2008 *Outlook* article was filed (at which time Peri's team's investigations into the activities of IIPM were ongoing).

Section 499 of the Indian Penal Code, which is its defamation provision, states that:

499. Defamation.--Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Among the exceptions included is the following:

It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

If Peri was to draw on truth as a defence against the defamation complaint, he thus had to show that his writing was in the public interest. But shouldn't truth be a defense against defamation in all cases, with due regard to privacy of individuals? This would, of course, require a clear enough definition of privacy, as a vague definition of the same can again be problematic. Is it, for example, 'in the public interest' to discuss sexual misconduct by a public official? Does it constitute a breach of privacy? The Abhishek Manu Singhvi case brings out this debate well. Singhvi, a member of the Parliament and lawyer, was caught in a sexual act on camera, inside his chamber, allegedly by his chauffeur. Electronic media were barred from airing the contents of the sex tape through a court order.<sup>45</sup> Singhvi's case is a classic example of two competing issues: public interest and privacy. It can be understood why an injunction against circulation of the video may be granted in a case like this, still leaving open to debate the question of whether the sexual act amounted, in any way, to misuse of public office. However, in cases where public interest and privacy are not dialectically related, truth should be an absolute defense against defamation, whether or not the disclosures are in the public interest.

A magisterial court issued, in March 2009, an ex parte order restraining *Outlook* magazine from publishing any defamatory articles against IIPM. However, *Outlook* and Peri got the ex parte order modified by the Delhi High Court to read, among other things, that the magazine could continue to publish articles against IIPM as long as IIPM's response/rebuttal, if received within two days, would be published with the same prominence in subsequent issues of the magazine without modification.<sup>46</sup>

The series of articles mentioned before and published later in *Careers360* magazine would turn out to provide additional judicial headaches for Peri, as they led to four more defamation cases against Peri and *Careers360* in four different places, all by IIPM: in Kamrup, Assam (with Google and Wikipedia

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<sup>45</sup> - (2012). 'HC restrains media house from airing Singhvi CD'. *Times of India*, 17 April, [http://articles.timesofindia.indiatimes.com/2012-04-17/india/31355177\\_1\\_telecasting-media-group-abhishek-manu-singhvi](http://articles.timesofindia.indiatimes.com/2012-04-17/india/31355177_1_telecasting-media-group-abhishek-manu-singhvi).

<sup>46</sup> 'M/S Outlook Publishing (India) ... vs M/S Planman Consulting India Pvt. ... on 13 September, 2011', *Indian Kanoon*, <http://indiankanoon.org/doc/1040249/>. Retrieved on 30 Mar, 2013.

among the other defendants);<sup>47</sup> in Gurgaon; in Delhi; and in Uttarakhand. The Gurgaon case has in the meantime been stayed by the Chandigarh High Court. In the Uttarakhand case, which involved a criminal complaint, non-bailable warrants against Peri were issued. On 8 October, 2010, the case was quashed by the Uttarakhand High Court in what Peri describes as an ‘exciting judgment.’<sup>48</sup> He says that it was the first time that they had been fully heard.

In a clear illustration of the chilling effect of having to appear in courts thousands of kilometers away from where one is based, Maheshwar Peri noted in a telephonic conversation on 22 November, 2012, that because of the various difficulties of dealing with lawsuits in places as remote and unfamiliar as Kamrup judiciary, the businesses he is part of now try to avoid having their articles appear in Assam.

The judicial process had, however, provided Peri with hope as well, as the judgement in the Uttarakhand case noted explicitly that IIPM should have been asked to prove the libelous accusations wrong the very first time the case was heard. In other words, the judge argued that if the charges leveled are indeed true, then defamation cases should not be admissible. It is worthwhile to quote the observations made by the Court at some length here:

The entire edifice of our justice system rests on the principle of truth! ... A truth spoken for public good can never be called defamatory. When the author of the disputed article stated in the article itself, in no ambiguous terms, that what he has stated is true and has been verified from Buckingham University and the Berkeley University that they have no arrangements with IIPM, then the first question the learned Magistrate should have asked the complainant was – ‘Do you have the authority to grant this degree from Buckingham University? If yes, show the proof? ... But no such evidence was shown, even to this Court! ... Yet IIPM in its bold advertisements published in Education Times ... states as follows: ... MBA & BBA Degree FROM Buckingham Business School, The University of Buckingham, UK.’

Interestingly, in his judgement, the judge seemed to go even beyond what the third exception to section 499 provides for, as he added explicitly:

The emphasis on ‘truth’ by this Court is not a reference on the exception to Section 499, but generally as a matter of caution, must be examined by the Court before issuing summons.

The court also referred to a Supreme Court judgment which clearly lays down that the judicial process cannot be misused for harassing someone. It noted that if the trial court finds that the chances of conviction are bleak, it should not allow criminal proceedings to continue, even at the preliminary stage.

But the court’s recommendation does not seem to have been followed in a more recent case. In 2011, IIPM filed a Rs. 500 million defamation suit against *The Caravan* magazine, its proprietors Delhi

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<sup>47</sup> According to Peri, ‘the case is complicated and there seems to be no end to it. Whenever there’s a hearing, our case is listed at 67<sup>th</sup> [or so] number and we’re never really heard. For two years, there has been no hearing in the case.’ Maheshwar Peri, in a telephonic conversation, 22 November, 2012.

<sup>48</sup> Uttarakhand verdict, *Careers360 Magazine*, [http://www.careers360.com/careers360\\_cms/newsimages/file/T/Operative%20judgement.pdf](http://www.careers360.com/careers360_cms/newsimages/file/T/Operative%20judgement.pdf). Retrieved on 30 March, 2013.

Press, author Siddhartha Deb, the publishing house Penguin Books India and Google India, over an article titled ‘Smell of Success: How Arindam Chaudhuri Made a Fortune Off the Aspirations – and Insecurities – of India’s Middle Classes’.<sup>49</sup> The article, authored by Siddhartha Deb and still accessible here,<sup>50</sup> appeared in *The Caravan* in February 2011 and was excerpted from his upcoming book which was to be published by Penguin Books, a reputed publishing house. The article is indeed highly critical of Chaudhuri's businesses but includes statements dismissing the criticism by Chaudhuri himself as well as by his media manager. While the article also touches upon aspects of Chaudhuri’s life that are more personal (his family, his hairstyle, etc.), it does so in a manner that is not derogatory. Nevertheless, IIPM managed to get a restraining order from the court ordering *The Caravan* to remove the allegedly libelous article. The restraining order has not been lifted for about two years now.

Though this particular case is not a criminal one, it resembles in a number of troubling ways the string of cases that IIPM has filed against its critics – both civil and criminal. First, while the rationale behind suing most of the said parties is clear, this is not the case for Google. Google was sued for ‘publishing, distributing, giving coverage, circulating, blogging the defamatory, libelous and slanderous articles’ through its search engine. Although Google has a mechanism through which it can be requested not to index defamatory or harmful content, all that the Google search engine does, in fact, is index web pages. That the company has been made a party to this defamation case, therefore, was most surprising and sets an unfortunate precedent where questions about intermediary liability are concerned.<sup>51</sup>

Second, though *The Caravan* and IIPM both operate out of New Delhi, the lawsuit was filed in the Court of Civil Judge in Silchar, in the remote and relatively inaccessible state of Assam, because the first plaintiff, Kishorendu Gupta, who operates ‘Gupta Electrical Engineers’ in Silchar,<sup>52</sup> is based in Assam and claimed to have accessed the article in Assam (IIPM is the second plaintiff named in the suit). According to *The Caravan*, Gupta works for the IIPM on a commission basis and receives benefits from IIPM per admission.<sup>53</sup>

Whether third parties apart from legal firms should be allowed to file defamation suits on behalf of the aggrieved is a question that is worth a debate. It also deserves to be noted that the threat of having to go through court proceedings in remote parts of the country is likely to have a particularly chilling effect on freedom of expression in the Internet age, as it especially affects those without the resources to fight such a case, making the existence of defamation laws that simultaneously provide strong protections

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<sup>49</sup> Deb S. (2013). ‘Sweet Smell of Success’. *The Caravan*, <http://www.caravanmagazine.in/reportage/sweet-smell-success>. Retrieved on 5 February, 2013.

<sup>50</sup> Sweet Smell of Success, cached, <http://web.archive.org/web/20110130135253/http://caravanmagazine.in/Story.aspx?Storyid=717&StoryStyle=FullStory>. Last accessed 10 February, 2013.

<sup>51</sup> This was repeated in the case of Vinay Rai, in which several intermediaries, including Google, were made party to a criminal complaint for hosting inflammatory content, as will be discussed in greater detail in a separate case study later in this paper.

<sup>52</sup> - (2011). ‘IIPM's Rs500-Million Lawsuit Against The Caravan’. *The Caravan*, 1 July, <http://www.caravanmagazine.in/perspectives/iipms-rs500-million-lawsuit-against-caravan-republished>.

<sup>53</sup> See footnote 50.

for the right to freedom of expression even more important. *The Caravan*, of course, did take up the fight and filed a transfer petition in the Supreme Court on the grounds that except for one party to the suit, Google, all other parties are based in or around Delhi. The magazine, in a release posted on its website, stated that the matter came up for hearing on 8 August, 2011, and that the Supreme Court of India has issued notice to all other parties on its transfer petition and has stayed the proceedings at the civil court in Silchar.<sup>54</sup>

Advocate Apar Gupta points out the dangers that arise when large sums of money, bordering on the ridiculous, are claimed as damages in defamation suits.<sup>55</sup> The courts, while admitting a defamation suit, must examine the basis of such computation. IIPM, for example, sued *The Caravan* and others for Rs. 500 million for a piece which did not even challenge the claims that IIPM made in its advertisements – unlike, for example, *Careers360* magazine, which did deconstruct the claims, as will be discussed. The very threat of getting sued for such disproportionate amounts, Gupta believes, could be problematic for free speech. While IIPM’s behavior may provide strong arguments to decriminalize defamation, this, in itself, thus not necessarily strengthen freedom of expression.

In fact, according to Gupta, the real issue is the time taken in India for cases to be decided by the courts. For example, in the *Khushwant Singh vs Maneka Gandhi* case,<sup>56</sup> an interim restraining order on the former’s book remained in place for six years, before being removed.<sup>57</sup> In order to prevent abuse of the law, Gupta opines, the entire judicial process (including appeals) should be free from unreasonable delays. Clearly, especially in the light of some of the new challenges that the Internet age has thrown up, judicial reform might be necessary and welcomed.

And as mentioned earlier, IIPM has a history of dragging critics to court. In 2005, Rashmi Bansal, who edits a career magazine named *JAM (Just Another Magazine)*, published a story (online<sup>58</sup> and in print) deconstructing many of the claims made by IIPM in its brochures and advertisements. The story revealed that IIPM had not been accredited by any Indian accreditation agency such as the All India Council for Technical Education (AICTE), the University Grants Commission (UGC) or under states’ acts. Bansal received a legal notice from IIPM asking her to remove the ‘defamatory’ content. When she refused to comply, IIPM managed to get an ex parte injunction from the court forcing her to remove the article from her website, meaning that the article is no longer present at the web address referenced to above. In addition to this, IIPM also filed a case against her in a Silchar court. Again, as in the earlier discussed case, the decision to sue in Assam is widely seen as a harassment tactic, given the fact that IIPM is based in New Delhi and *JAM* in Mumbai. IIPM also filed for damages.

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<sup>54</sup> - (2011). ‘The Supreme Court Stays IIPM Case against The Caravan in Silchar’. *The Caravan*, 1 August, <http://www.caravanmagazine.in/perspectives/supreme-court-stays-iipm-case-against-caravan-silchar>.

<sup>55</sup> Telephonic conversation with Apar Gupta, 5 March, 2013.

<sup>56</sup> ‘Khushwant Singh And Anr. vs Maneka Gandhi on 18 September, 2001’, *Indian Kanoon*, <http://indiankanoon.org/doc/1203848/>. Retrieved on 5 Feb, 2013.

<sup>57</sup> - (2001). ‘HC nod to Khushwant’s autobiography’. *Tribune India*, 18 September, <http://www.tribuneindia.com/2001/20010919/main7.htm>.

<sup>58</sup> *Jam Mag*, <http://www.jammag.com/careers/articles/mbacorner/iipm/index.htm>. Retrieved on 5 February, 2013.

IIPM has also been known to use extra-legal strategies. In August 2005, Gaurav Sabnis, a popular Indian blogger and then-employee of IBM, linked to Rashmi Bansal's story about IIPM in his blog and added some of his own comments.<sup>59</sup> In this post titled 'The Fraud That Is IIPM,' he cautioned prospective students against joining IIPM. He then received a notarised email from the President of IIPM's legal cell, advising him to either delete all of his posts about IIPM posted anywhere on the Internet and tender an apology, or face a lawsuit amounting to Rs. 125 crore.<sup>60</sup> When Sabnis didn't comply, IIPM subsequently complained to a Senior IBM Executive about his company's employee's blog posts that were critical of IIPM, leading Sabnis to explain to his Senior that this was his personal blog and that IBM was in no way responsible for what he posted online in his personal capacity. However, in a subsequent email, the Dean of IIPM is understood to have communicated to the Senior Executive a decision by the IIPM Students' Union to 'burn Thinkpads' (laptops) that the institution had purchased from IBM in front of IBM's Delhi office if Sabnis would not delete his posts. In a clear example of the far-reaching consequences that standing up for your right to freedom of expression can have, although Gaurav was not dooced over the controversy, he chose to quit his job at IBM so that the firm would not be dragged into any controversy because of his actions.<sup>61</sup> Sabnis's post continues to be accessible on the Net.

In this context, where criminal and civil defamation suits are clearly used to silence critics, it would likely be an important boost to the right to freedom of expression on the Internet in India if in future cases, judges will follow the recommendation made by the Uttarakhand High Court in Peri's case. For example, can the countless portals that allow users to write reviews of products and/or services on the Internet be called defamatory? Section 499 of the IPC hints that 'harming business interests' could amount to defamation without making any exceptions for business practices that can be proven unethical before a court of law:

Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Where 'truth in the public interest' is the only defence available but not at all clearly defined, such provisions can prove to be highly problematic for citizen journalists who expose the shady practices of various business establishments using only a cell phone camera and an Internet connection and without the protection that media houses enjoy.<sup>62</sup> If the defamation provision continues to be used as a bullying tactic in the way illustrated in this section, it will hamper both investigative journalism and the right to freedom of expression more broadly.

Finally, in the face of the misuse and harassment by those with the power and resources to do so that is documented in this chapter and elsewhere, including by filing cases in courts around the country, a

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<sup>59</sup> Sabnis G. (2005). 'The fraud that is IIPM'. *Vantage Point*, 5 August, <http://gauravsabnis.blogspot.in/2005/08/fraud-that-is-iipm.html>.

<sup>60</sup> Sabnis G. (2005). 'I'm disconnecting my cable connection'. *Vantage Point*, 6 October, <http://gauravsabnis.blogspot.in/2005/10/im-disconnecting-my-cable-connection.html>.

<sup>61</sup> Sabnis G. (2005). 'An update'. *Vantage Point*, 10 October, <http://gauravsabnis.blogspot.in/2005/10/update.html>.

<sup>62</sup> It is arguably also a threat to innovation and openness, though that is beyond the scope of this paper.

strong case for the decriminalization of defamation can arguably be made. While, as pointed out earlier, this may not resolve all problems related to the misuse of the law, keeping the criminal defamation provision on the books is a severe threat to freedom of expression in this context, seeing the severe punishments and potential silencing effect on critical and/or dissenting voices that a criminal offence entails.

## Protecting the Government and National Symbols: Aseem Trivedi's Cases

Aseem Trivedi is an award-winning Indian political cartoonist, anti-corruption crusader and free speech activist. His website [www.cartoonsagainstcorruption.com](http://www.cartoonsagainstcorruption.com) was taken down in December 2011, following complaints that it contained 'objectionable' content. After that, four different cases were filed against him in Maharashtra under various provisions of criminal law including sedition and section 66A of the IT Act. He was arrested in September 2012 and he remained in custody for a week. In a telephonic conversation on 4 February, 2013, Aseem Trivedi's lawyer, Vijay Hiremath, said that the sedition charges against Trivedi have been dropped. But he continues to face charges under the IT Act and the Prevention of Insults to National Honour Act. Trivedi's contentious cartoons<sup>63</sup> include one titled 'National Emblem', which shows the four Sarnath lions of King Asoka that sit above the motto 'Satyameva Jayate' (truth alone shall triumph) as bloodthirsty wolves underscored with the motto 'Bhrashtamev Jayate' (long live corruption); 'Gang Rape of Mother India', which shows 'Mother India,' wearing a tri-color sari, about to be raped by a character labeled 'Corruption'; and 'National Toilet,' which depicts the Parliament as a toilet seat and ballot paper used for voting as the toilet paper.<sup>64</sup>

Trouble began when, on 27 December, 2011, Aseem Trivedi received an email from BigRock, the domain name registrar with which his website was registered, saying,

We have received a complaint from Crime Branch, Mumbai against domain name 'cartoonsagainstcorruption.com' for displaying objectionable pictures and texts related to flag and emblem of India. Hence we have suspended the domain name and its associated services.<sup>65</sup>

In September 2012, BigRock posted an official explanation on their blog about the takedown which said, among other things, that the takedown was in accordance with the IT Rules notified in 2011.<sup>66</sup> As noted earlier in this paper, the IT Rules make it necessary for intermediaries to take action on content reported by aggrieved parties within thirty six hours, or they risk facing prosecution. Soon after his website was taken down, Aseem Trivedi moved his cartoons to Blogger, which is owned by Google. In case a complaint is sent to Blogger, it would again be mandatory for Google to 'take action' or risk facing prosecution.<sup>67</sup> It can be argued, however, that the complaint should have been sent to BigRock by the aggrieved directly, rather than by the Crime Branch. While the IT Rules already put a tremendous amount of pressure on intermediaries to take down controversial content, this only increases when the police, inappropriately, start to take up the role of messenger.

<sup>63</sup> Nairita (2012). '8 'seditious' cartoons for which Aseem Trivedi was arrested'. *One India*, 2 November, <http://news.oneindia.in/2012/09/10/8-seditious-cartoons-for-which-aseem-trivedi-arrested-1068065.html>.

<sup>64</sup> See Wikipedia, [http://en.wikipedia.org/wiki/Aseem\\_Trivedi#Controversy](http://en.wikipedia.org/wiki/Aseem_Trivedi#Controversy). Retrieved on 10 February, 2013.

<sup>65</sup> Arora K. (2012). 'Website blocked, cartoonist moves content to another host'. *Times of India*, 7 January, [http://articles.timesofindia.indiatimes.com/2012-01-07/india/30601289\\_1\\_website-cartoons-domain](http://articles.timesofindia.indiatimes.com/2012-01-07/india/30601289_1_website-cartoons-domain).

<sup>66</sup> Shashank (2012). 'cartoonsagainstcorruption.com – BigRock's Stance and a Sequence of Events'. *Big Rock*, 25 September, <http://bigrock.com/blog/general/cartoonsagainstcorruption-com-bigrocks-stance-and-a-sequence-of-events>.

<sup>67</sup> <http://cartoonsagainstcorruption.blogspot.in/>. Retrieved on 10 Feb, 2013.

Following the takedown, four FIRs were registered against Aseem Trivedi – two in Mumbai's Bandra-Kurla police station and two through the Beed District Court, also in Maharashtra. It was in one of the cases in the District Court that Trivedi was booked on serious charges such as sedition/treason (section 124A of the IPC) as well as under the Prevention of Insults to National Honour Act, 1971, and under section 66A of the IT Act (sending messages online that are grossly offensive or have a menacing character). All cases were registered on the basis of his cartoons displayed at an anti-corruption rally in 2011 and on his website (which was taken down earlier). In fact, one of the cases in the Bandra-Kurla police station was against Aseem, India Against Corruption (IAC, an anti-corruption movement of which he was a part) and other IAC members like Anna Hazare, Arvind Kejriwal, Kiran Bedi, and others.

Had these cartoons been published in print alone, possibly only the Prevention of Insults to National Honor Act and section 124A could have been invoked against Trivedi, as section 66A does not have an equivalent in the Indian Penal Code in this particular case. In other words, solely on the basis of the cartoons being published online, an additional offence came into existence.

As described before, both the wording and the use of section 66A have come under sharp criticism. The section says:

66A. 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 by making use of such computer resource or a communication device,

(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 three years and with fine.

It has been widely argued that section 66A violates Article 19 of the Indian Constitution which allows for 'reasonable restrictions' on freedom of expression but only in extreme situations like those where public order, national security, etc. is at stake.<sup>68</sup> Section 66A of the IT Act has the effect of curbing such freedoms on the Internet even for content that may be deemed 'annoying' or 'inconvenient' or 'offensive,' with no precise definitions offered for the same – all this at the discretion of police.

Furthermore, how the cartoons amounted to 'sending offensive/menacing messages' is worth a debate. Pranesh Prakash of the Centre for Internet and Society is of the opinion that,

The explanation to s.66A(c) explicitly uses the word 'transmitted', which is far broader than 'send', and it would be difficult to reconcile them unless 'send' can encompass sending to the publishing intermediary like Twitter. Part of the narrowing down of s.66A should definitely focus on making it applicable only to directed communication

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<sup>68</sup> Viswanathan A. (2013). 'An unreasonable restriction'. *The Hindu*, 20 February, <http://www.thehindu.com/opinion/lead/an-unreasonable-restriction/article4432360.ece>.

(as is the case with telephones, and with the UK's Malicious Communication Act), and not be applicable to publishing.<sup>69</sup>

At present, however, section 66A still refers not only to one-on-one communication but to almost all online communication, making its scope all-encompassing.

The temptation to apply section 66A seems high because of its notorious ability to criminalise actions which weren't criminalised under traditional law – for example, speech causing annoyance is illegal only when it appears online. Another reason why it is a tool of choice is that it is cognisable – that is, the police do not require a court-issued warrant to be able to make arrests under this section. Combined with a non-bailable section, using this provision thus makes sure that the accused has to seek bail from a magistrate before being released from jail.

The police are known to have acted with unusual diligence in certain cases involving section 66A, often arresting people for their Twitter and Facebook updates under pressure or influence from various entities. The application of section 66A is a good way of ensuring that the accused are harassed even if not convicted. And the section doesn't entail penalty for false or frivolous complaints.

Section 124A of the Indian Penal Code deals with 'sedition'. This section predates Independence and was used by the British colonisers to suppress dissent in the erstwhile occupied Indian subcontinent. The United Kingdom itself abolished the sedition law in 2010. The section in the IPC reads:

124A. Sedition.--Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.-The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2.-Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.-Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

The law, thus, criminalises incitement to enmity for the 'government' – not the 'Union' of India or the 'Republic' of India, but the 'government'. It is surprising that citizens of a free nation should be expected to display 'loyalty' and 'non-enmity' for the 'government' and not do anything that amounts to the contrary. This leaves open all too easily the door to criminalising legitimate criticism of the government – be it online or offline.

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<sup>69</sup> Prakash P. (2012). 'Breaking Down Section 66A of the IT Act'. *CIS India*, 25 November, <http://cis-india.org/internet-governance/blog/breaking-down-section-66-a-of-the-it-act>.

The threat to online speech from sedition and other such regressive laws is potentially higher than for offline content, as online content is accessible over a longer time. The ability to take screenshots and, thus, provide ‘proof’ of commission of an offence allows anyone who has enough to gain from the prosecution of someone else’s speech/expression to easily initiate criminal proceedings. One of the complaints which led to Trivedi’s arrest was filed by a member of the Republican Party of India.<sup>70</sup> The complaint on which his website was taken down was filed by a member of the Congress party, RP Pandey.<sup>71</sup> Trivedi frequently mocked Congress politicians in his cartoons. The possibility that both these complainants had political mileage to derive out of such prosecution is not far-fetched. Indeed, the nature of two of the sections invoked – the Prevention of Insults to National Honor Act and the sedition provision in the IPC – seems to point to an attempt at political and moral grandstanding. This is not to say that the government (in which the Congress party is an ally and of which one of the complainants is a member) had an active role to play in Trivedi’s arrest. But the possibility that the motivation for filing the complaint was political (rather than hurt national sentiment) cannot be dismissed too summarily either – especially as public opinion, in the wake of widespread protests over the issue of corruption, was actually hugely in Trivedi’s favour, *in particular after his arrest*.<sup>72</sup>

Following the arrest, the Bombay High Court strongly reprimanded the police and Maharashtra state government for arresting citizens on frivolous grounds and curbing civil liberties.<sup>73</sup> The Bombay High Court was hearing a public interest litigation filed by a lawyer Sanskar Marathe against the arrest of Trivedi for sedition. The bench observed that arrests such as Trivedi’s pose a serious threat to freedom of expression and that arrests on such frivolous grounds are unacceptable. The bench also observed that it is important to lay down certain parameters for the application of the sedition law. The court asked, ‘What is the government’s stand now? Does it intend to drop the charge? Someone has to take political responsibility for this.’

The government’s counsel, Advocate General Darius Khambata told the court, ‘After having a close look at the case, it can be seen that there is clearly no case under section 124(a) of IPC for sedition. Hence the government has decided to drop invocation of the charge against Trivedi’ He added, ‘Three cartoons we still find are violative of the National Honour Act and Information Technology Act. Proceedings in this will continue against him.’<sup>74</sup> Khambata also described police action against the

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<sup>70</sup> - (2012). ‘Cartoonist Aseem Trivedi arrested on individual’s complaint’. *IBN Live*, 10 September, <http://ibnlive.in.com/news/cartoonist-aseem-trivedi-arrested-on-individuals-complaint/290287-3.html>.

<sup>71</sup> Rana P. (2012). ‘Cartoonist faces ban on right to poke fun’. *Wall Street Journal*, 4 January, <http://blogs.wsj.com/indiarealtime/2012/01/04/cartoonist-faces-ban-on-right-to-poke-fun/>.

<sup>72</sup> - (2012). ‘India cartoonist Aseem Trivedi’s arrest sparks outrage’. *BBC*, 10 September, <http://www.bbc.co.uk/news/world-asia-india-19540565>.

<sup>73</sup> - (2012). ‘High Court slams Mumbai Police for arresting cartoonist Aseem Trivedi for sedition’. *Economic Times*, 14 September, [http://articles.economictimes.indiatimes.com/2012-09-14/news/33844355\\_1\\_sedition-charges-sedition-law-arrest](http://articles.economictimes.indiatimes.com/2012-09-14/news/33844355_1_sedition-charges-sedition-law-arrest).

<sup>74</sup> - (2012). ‘Maharashtra government to drop sedition charge against cartoonist Assem Trivedi’. *Economic Times*, 12 October, [http://articles.economictimes.indiatimes.com/2012-10-12/news/34412754\\_1\\_aseem-trivedi-sanskar-marathe-sedition](http://articles.economictimes.indiatimes.com/2012-10-12/news/34412754_1_aseem-trivedi-sanskar-marathe-sedition).

cartoonist as a ‘bonafide knee jerk reaction’ to the numerous complaints received by the police against the cartoons.

The court again asked the Maharashtra government to clarify its stand on the scope of section 124A by 19 October. On 19 October, 2012, the Maharashtra government filed a draft circular in the court which simply reiterated the exceptions mentioned above: ‘Criticism/disapproval of government with a view to changing it is not seditious.’ The government, however, maintained that the provision is important and that it comes in handy at times.<sup>75</sup>

Exceptions listed as ‘Explanation 2’ and ‘Explanation 3’ (see description of section 124A earlier) should indeed have been taken into account in this particular case, as the Maharashtra government also maintained. Notwithstanding the exceptions, however, the section itself should be scrapped because it criminalises ‘disaffection’ for the government, even when read along with the exceptions.

Finally, the Prevention of Insults of National Honour Act, 1971 states that:

Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1 – Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.<sup>76</sup>

For the sake of brevity, other explanations under this Act haven’t been listed here. In India, any depiction of national symbols that seeks to denigrate these, or creates such impression, is not only illegal but is also a very sensitive issue. India has a culture of reverence towards national symbols and advocating that the law be scrapped altogether might not be a wise argument. In Trivedi’s case, however, it is debatable whether people actually took offense to such representation or whether it was an attempt by members of political parties to appropriate a law made to prevent insult to national symbols in order to manufacture outrage over the cartoons and thus reap political gain.

Summonses were served at Aseem Trivedi’s home in Kanpur, in the North Indian state of Uttar Pradesh, in his absence. In August 2012, a non-bailable warrant was issued in his name and served to his Kanpur residence where he wasn’t present. In September 2012, Aseem traveled to Mumbai to inquire about the charges against him. He was arrested and remanded to judicial custody for two weeks

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<sup>75</sup> - (2012). ‘Maharashtra sets down guidelines for invoking sedition charge’. *The Hindu*, 20 October, <http://www.thehindu.com/todays-paper/tp-national/maharashtra-sets-down-guidelines-for-invoking-sedition-charge/article4015021.ece>.

<sup>76</sup> Prevention of Insults to National Honour Act, 1971 – No. 69 of 1971 (23 December, 1971), amended by the Prevention of Insults to National Honour (Amendment) Act, 2005 – No. 51 of 2005 (20 December, 2005) [http://mha.nic.in/pdfs/Prevention\\_Insults\\_National\\_Honour\\_Act1971.pdf](http://mha.nic.in/pdfs/Prevention_Insults_National_Honour_Act1971.pdf). Retrieved on 10 February, 2013.

after he refused bail and asked for the sedition charges against him to be dropped.<sup>77</sup> After he was released, he vowed to fight for the abolition of the sedition provision, which is a draconian, colonial law used by the British government to suppress dissent.

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<sup>77</sup> Burke J. (2012). 'Indian cartoonist Aseem Trivedi jailed after arrest on sedition charges'. *The Guardian*, 10 September, <http://www.guardian.co.uk/world/2012/sep/10/indian-cartoonist-jailed-sedition>.

## Intermediary Liability as well as Hate Speech Provisions Take 1: Vinay Rai's Case

Vinay Rai is a Delhi based law graduate and journalist with an experience of 12 years and is currently editing a Noida based Urdu weekly, *Akbari*. In December 2011, Rai filed a complaint alleging criminal negligence by twenty one Internet companies – including Google, Facebook, Yahoo, Microsoft, Exbii, Shyni Blog, Orkut, YouTube and Blogspot – as they had hosted ‘objectionable content’ on their websites which ‘could lead to riots.’<sup>78</sup> Rai filed the FIR under section 109, IPC (‘punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment’ – this section is used for the prevention of corruption); section 120B, IPC (‘punishment for criminal conspiracy’); section 153A, IPC (‘promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony’); section 153B, IPC (‘imputations, assertions prejudicial to national integration’); section 292, IPC (‘sale, etc., of obscene books, etc.’); section 293, IPC (‘sale, etc., of obscene objects to young person’); section 295A, IPC (‘deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs’); section 298, IPC (‘uttering, words, etc., with deliberate intent to wound the religious feelings of any person’); and section 500, IPC (‘punishment for defamation’).

Both the Indian subsidiaries of these companies as well as the parent companies were initially made parties to the case. While the local divisions of Yahoo and Microsoft were dropped from the case in March 2012, their parent companies continue to face charges.

While Vinay Rai filed the criminal complaint on 16 December, another person named Mufti Aijaz Ashraf Qasmi filed a similar but civil lawsuit against various intermediaries, again for content that could spark riots, later that month. According to a report in Firstpost, Rai and Qasmi have been friends for years.<sup>79</sup> Acting upon Qasmi’s complaint, a Delhi court ordered various intermediaries to remove damaging content from their websites.<sup>80</sup>

The Vinay Rai case, which we will focus on in this section, raised many unanswered questions about two different issues: one, questions surrounding intermediary liability and procedural loopholes in the law, and two, the challenge that laws to protect community sensitivities pose to freedom of expression in the Internet age.

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<sup>78</sup> Rai V. (2013). ‘Vinay Rai v. Facebook India and Ors.’. *Outlook*, 20 February, <http://outlookindia.com/article.aspx?279956>.

<sup>79</sup> Raza D. (2011). ‘Sibal not a lone crusader for internet censorship: meet the others’. *Firstpost*, 26 December, <http://www.firstpost.com/india/sibal-not-a-lone-crusader-for-internet-censorship-meet-the-others-166052.html>.

<sup>80</sup> Edwards A. (2012). ‘Clean up your website’: Indian court orders Facebook and Google to remove “anti-religious” content’. *Daily Mail*, 2 January, <http://www.dailymail.co.uk/news/article-2081078/Facebook-Google-ordered-remove-anti-religious-content.html#ixzz2OwKseoBc>.

Let us look at the issue of intermediary liability first. In a report submitted to the trial court, the Ministry of Information Technology said that the government of India is satisfied that the content complained about violates the IT Rules notified in 2011.<sup>81</sup> Rule (4) of the IT Rules reads:

The intermediary, on whose computer system the information is stored or hosted or published, *upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature* about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2) (emphasis ours).

Thus, unless the intermediary has ‘obtained knowledge by itself’ of infringing content or has been ‘brought to actual knowledge by an affected person in writing or through email signed with electronic signature’ of such content, the intermediaries are protected from prosecution under section 79 of the IT Act, also known as the ‘safe harbour’ provision.

It is clear that the IT Rules were never invoked by the complainant, as no formal representation for content removal was made to any of the intermediaries. In fact, in an interview to the *Wall Street Journal*, Vinay Rai admitted that he did not follow this prescribed path as he did not want to complain to ‘foreign companies’, and that he decided to make a representation before the government instead. Rai disclosed in the *Wall Street Journal* interview that he had been in talks with the government for about a year before filing a criminal complaint in December 2011.<sup>82</sup> Interestingly, the Minister of Information Technology, Mr. Kapil Sibal had been meeting the companies since August 2011, asking them to remove and even ‘prescreen’ certain content, even before it’s uploaded. Sibal had shown examples of objectionable content to the intermediaries in these meetings, including a derogatory Facebook post about Sonia Gandhi, President of the ruling Congress Party.<sup>83</sup> In a telephonic conversation on 29 March, 2013, Rai denied having complained himself about content that was political in nature. He said that he had only brought to the attention of the government blasphemous content that could hurt the sentiments of people belonging to various communities. However, Rai complained, the Ministry did not respond promptly. In his criminal complaint, Rai claimed that he was now bringing the issue to the notice of the judiciary not only in the public interest but as a person who believes in a secular India as well.

It is clear that the presiding judge did find some of the content that he was shown deeply troubling. On 23 December, 2011, the Patiala House Court issued summons to Indian heads of various companies in the case and also asked the Ministry of External Affairs to have summons served to Chief Executives of various intermediaries which are headquartered abroad, including Steve Ballmer of Microsoft and Larry Page of Google. In the summons, Justice Sudesh Kumar also commented that the government of India had in fact ‘turned a blind eye towards the offensive, degrading and demeaning content on these

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<sup>81</sup> Viswanathan A. (2012). ‘The curious case of Vinay Rai’. *The Hindu*, 15 February, <http://www.thehindu.com/opinion/op-ed/the-curious-case-of-vinay-rai/article2893650.ece>.

<sup>82</sup> Sharma A. and P. Rana (2012). ‘Meet Vinay Rai, India’s Censorship Crusader’, *Wall Street Journal*, 16 January, <http://blogs.wsj.com/indiarealtime/2012/01/16/meet-vinay-rai-indias-censorship-crusader/>.

<sup>83</sup> Timmons (2011), Op. cit. ‘At the meeting, Mr. Sibal showed attendees a Facebook page that maligned the Congress Party’s president, Sonia Gandhi’.

websites which is outrageous and also against national integration’ and asked it to file a report regarding the same on the next hearing, i.e. 13 January, 2012. The court noted that the accused persons are liable to be summoned for offences under sections 153A, 153B and 295A of the IPC, all sections that protect the sensitivities of and the relations among different communities.

Under section 196 of the Code of Criminal Procedure (CrPC), a court cannot take cognisance of a case under section 295A, however, without the previous sanction of the Central Government or State Government or District Magistrate. On 13 January, 2012, the Government of India’s Department of Telecom submitted its report through its counsel, Seema Sharma, in the trial court, saying:

Government of India after being satisfied that such contents are violative [sic] of the provisions of the information technology (intermediaries and guidelines) rules 2001 [sic] and after due application of judicious minds find it appropriate to grant sanction under 196 of CrPC to proceed against the accused persons in the aforesaid complaint in national harmony, integration and national interest

thus granting permission to the trial court to proceed.<sup>84</sup>

In the meantime, various intermediaries had approached the Delhi High Court through their counsels to have the summons quashed, but the same was denied to them. Also on 13 January, 2012, the Delhi High Court upheld the summons issued by the trial court and gave permission for prosecution.<sup>85</sup> What caused particular alarm at that time was the remark by Justice Kait of the Delhi High Court, ‘You just have a stringent check. Otherwise, like China, we may pass orders banning all such web sites.’<sup>86</sup> Justice Kait made this remark while responding to the plea by an intermediary stating, ‘No human interference is possible, and moreover, it can’t be feasible to check such incidents. Billions of people across the globe post their articles on the website.’ That an Indian court should make a remark which, in effect, makes China the benchmark of freedom and democracy, is rather upsetting, for the Indian judiciary is supposed to be the guardian of democracy.

Before the next hearing – which was to take place on 13 March, 2012, in the trial court – Google and Facebook, in the course of questioning the proceedings, argued before the Delhi High Court that the complaint by Vinay Rai, upon which the case was based, should be considered a private complaint and that the Government of India should not be made a party to it. The High Court, however, struck down the plea, maintaining that:

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<sup>84</sup> Raza D. (2012). ‘Vinay Rai vs Facebook: Govt uses courts to censor the Internet’. *Firstpost*, 13 January, <http://www.firstpost.com/india/vinay-rai-vs-facebook-govt-uses-courts-to-censor-the-internet-181603.html>. The same report was filed in the Delhi High Court on 15 February, 2012. See – (2012). ‘Delhi High Court reprieve for Google and Facebook’. *Tehelka*, 14 February, [http://archive.tehelka.com/story\\_main51.asp?filename=Ws140212SOCIAL.asp](http://archive.tehelka.com/story_main51.asp?filename=Ws140212SOCIAL.asp).

<sup>85</sup> On 16 February, 2012, Google and Facebook also filed petitions in the Delhi High Court asking for personal exemption from physical appearance for their executives. Though the government protested against this, the High Court granted exemption from personal appearance in the trial proceedings.

<sup>86</sup> Majumder R. (2012). ‘A Delhi high court judge threatens to go the China way. The IT act is closing in. The war on the web is a war on us’. *Tehelka*, 18 February, [http://archive.tehelka.com/story\\_main51.asp?filename=Ne180212DELHI.asp](http://archive.tehelka.com/story_main51.asp?filename=Ne180212DELHI.asp).

This cannot be treated as a private complaint. It is not a complaint where only the complainant is the victim and nobody else is affected. It is a complaint wherein the complainant has alleged that the websites published objectionable materials against some great national personalities and religious figures.<sup>87</sup>

Justice Suresh Kait added that the assistance of the Delhi Police and the Centre was sought because the trial court had called for a report from the Centre for assistance in the case. Thus, on 14 February, 2012, the Government of India became a party to the case.

The addition of the government to the parties in the case adds an additional complication. As section 79 of the IT Act mentions this as an additional condition under which intermediaries can lose the safe harbour protection, could it perhaps be argued now that the intermediaries had been 'notified by the appropriate Government or its agency' that unlawful content was being hosted on its platforms? As we do not have access to the communication between the government and the intermediaries, it is difficult to comment on this matter in a conclusive manner. But some observations can be made. Seeing that these were supposed to remain a secret, it would be disconcerting if the meetings held by the government with the heads of certain companies in 2011 would be considered a formal notification 'by the Government or its appropriate agency,' as the government's counsel seems to maintain.<sup>88</sup> As with the complaints of private persons, it is crucial for the sake of accountability that any complaints or notifications can be traced through a paper or electronic trail. Even if the meetings were to qualify as formal complaints, among the accused, only Google, Yahoo, Microsoft and Facebook were part of these meetings. Were *all* the accused in this case asked to remove inflammatory content before being taken to court? If not, then it could well be argued that the criminal proceedings against them are in violation of the safe harbor provision under section 79 of the IT Act – unless the Government had intimated all of the accused about its concerns in any other way. As noted before, without additional information about the communication, this is not something that we can conclusively comment on.

At the time of writing, the next hearing of the Vinay Rai vs. Intermediaries case is scheduled for December 4, 2013, in the Patiala House Court. For those concerned with the freedom of expression on the Internet in India, it remains important to follow this case closely, as strong safe harbour provisions for intermediaries are not only crucial for intermediaries themselves, but for all of us, as they are central to our ability to speak freely online. That Rai's complaint was accepted by the Court despite the fact that Rai had not followed established procedure had caused sincere alarm among those concerned with freedom of expression on the Internet in India. It is hoped that the outcome of the case will prove that this alarm was ultimately unfounded.

Questions around intermediary liability are not, however, the only ones thrown up by the Vinay Rai case. Though an angle that has been less explored so far, it also brings into focus the challenge that laws that protect the sensitivities of and relationships among India's many different communities pose

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<sup>87</sup> - (2012). 'Delhi High Court reprieve for Google and Facebook'. *Tehelka*, 14 February, [http://archive.tehelka.com/story\\_main51.asp?filename=Ws140212SOCIAL.asp](http://archive.tehelka.com/story_main51.asp?filename=Ws140212SOCIAL.asp).

<sup>88</sup> This was an argument used by the government's representative. Naveen Sharma, Delhi government's counsel, told the court: 'On December 12, 2011, Google and Facebook not only had the knowledge of the content questioned by Government of India, but their representatives were present in person in meetings and informed of the content'. *Ibid*.

at times. Sections 153A, 295A and 505(2) of the IPC, some of which were mentioned by Justice Sudesh Kumar in his summonses to the Indian heads of various intermediaries, are of particular importance here. They read as follows:

153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.--(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

505(2) Statements creating or promoting enmity, hatred or ill-will between classes.--Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.--Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written, or by signs or by visible representations or otherwise insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

That India has provisions on its books that aim to ensure the peaceful coexistence of its many communities is, seeing its size and diversity, understandable. But the ways in which the provisions have been phrased might ultimately have done more harm than good to freedom of expression, as well as to the peaceful coexistence of India's communities in fact. Indeed, these provisions have allowed reference to a group identity, in combination with the orchestration of an actual or potential threat of group violence, to emerge as effective means for groups to impose their worldview on others, including through what appear as ever-widening restrictions on freedom of expression. In other words, it is those who are most willing to revert to violence if need be who de facto become the 'custodians' of the 'community's identity', while those with alternative visions who do not support such aggressive strategies are effectively marginalised.<sup>89</sup> As the potential of the Internet to give voice to the hitherto voiceless largely remains, this tension will likely be felt only more and more acutely as an ever larger number of Indians comes online, voicing opinions and beliefs that have for long, at least publicly, remained largely unsaid and with that, possibly challenging the self-representations and self-understandings of others. If those who do not want to resort to aggression are to continue to find their voice online, the laws that seek to manage the relationships between India's communities will need to change.

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<sup>89</sup> The potentially oppressive effects of an uncritical celebration and defense of 'community' are something that feminists, for example, have commented on for long.

More specifically, as this borders on a blasphemy law, section 295A, which prohibits insults to religious beliefs, should be scrapped. While believers of all religious communities, as well as those who do not adhere to any religion, should indeed be protected, religious beliefs as such should not. Without the right to question, be it one's own religion or another, the right to religion becomes meaningless. Those who engage in violence because their own beliefs are questioned or challenged should not be protected by the law on that account.

Sections 153A and 505(2), which could be considered India's primary hate speech provisions, would benefit from modifications. In particular, to be effective yet supportive of the right to freedom of expression, they require a clear delineation of thresholds which are set high, including an implicit or explicit acknowledgment of the power relations between communities. Unless hate speech provisions include recognition of structural and historical discrimination, their implementation will likely continue to disproportionately benefit those who already are in a more powerful position than their adversaries, however relative that position might be. The next case that we will discuss in this paper, that of Shaheen Dhada, makes this amply clear.

## Hate Speech Provisions Take II: Shaheen Dhada's Case

On 17 November, 2012, Bal Thackeray, the founder of the Shiv Sena, a right-wing ethnocentric party, passed away in Mumbai, the Shiv Sena's stronghold. This was preceded by a brief illness and anticipation of Bal Thackeray's (then impending) death. The supporters of the political outfit have a history of attacking business establishments, public property, etc. and there were widespread apprehensions that his funeral will be marked by violence.<sup>90</sup> News of his death, thus, brought Mumbai to a standstill for the weekend, with businesses shutting and taxis going off the roads, amid fears of violence by Thackeray's supporters.<sup>91</sup>

On 19 November, 2012, news surfaced of the arrest of two girls from Palghar district, on the outskirts of Mumbai, for having questioned the *bandh* (shutdown) on Facebook. In a Facebook post, Dhada had written,

With all respect, every day, thousands of people die, but still the world moves on. Just due to one politician died a natural death, everyone just goes bonkers. They should know, we are resilient by force, not by choice. When was the last time, did anyone showed some respect or even a two-minute silence for Shaheed Bhagat Singh, Azad, Sukhdev or any of the people because of whom we are free-living Indians? Respect is earned, given, and definitely not forced. Today, Mumbai shuts down due to fear, not due to respect.<sup>92</sup>

The complaint was filed by Palghar Shiv Sena chief Bhushan Anant Sankhe.<sup>93</sup> Dhada's friend Rinu Srinivasan, who had liked, shared and commented on the post on Facebook was also arrested. Her comment read: 'Everyone know it's done because of fear!!! We agree that he has done a lot of good things. also we respect him, it doesn't make sense to shut down everything! Respect can be shown in many other ways!'<sup>94</sup> She later deleted the shared post from her timeline and also removed her comment, after a friend warned her.

The FIR was filed under section 295A of the IPC ('deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs') and section 66A of the IT Act ('sending messages that are grossly offensive or menacing in character through electronic medium').<sup>95</sup> As explained earlier, section 66A is cognisable; therefore the police can arrest a person

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<sup>90</sup> Shaikh Z. (2012). 'Bal Thackeray: The tiger of the jungle raj'. *Indian Express*, 17 November, <http://www.indianexpress.com/news/bal-thackeray-the-tiger-of-the-jungle-raj/1032481/0>.

<sup>91</sup> - (2012). 'Bal Thackeray passes away: Bandh-like situation to continue on Sunday'. *DNA*, 18 November, [http://www.dnaindia.com/mumbai/report\\_bal-thackeray-passes-away-bandh-like-situation-to-continue-on-sunday\\_1765935](http://www.dnaindia.com/mumbai/report_bal-thackeray-passes-away-bandh-like-situation-to-continue-on-sunday_1765935).

<sup>92</sup> - (2012). 'Mumbai shuts down due to fear, not respect'. *The Hindu*, 19 November, <http://www.thehindu.com/news/states/other-states/mumbai-shuts-down-due-to-fear-not-respect/article4111814.ece>.

<sup>93</sup> Preeti (2012). 'Read FIR in Shaheen Dhada's case here'. *CIOL*, 21 November, <http://www.ciol.com/ciol/news/122164/facebook-arrests-read-shaheen-dhadas-fir>.

<sup>94</sup> Vaidyanathan R. (2012). 'India Facebook arrests: Shaheen and Renu speak out'. *BBC*, 26 November, <http://www.bbc.co.uk/news/world-asia-india-20490823>.

<sup>95</sup> Preeti (2012), Op. cit.

without a warrant. On the night of 20 November, 2012, just hours after the status update, the two girls were summoned by the Palghar police, detained overnight and arrested in the morning. Before this, members of the Shiv Sena had ransacked the clinic belonging to Dhada's uncle and harassed the patients therein. Police action in this case was highly unacceptable even though it may have been under pressure from Shiv Sena activists. The application of section 66A was clearly unjustified, as posting a political opinion on Facebook in a perfectly civil manner is legitimate speech, which must not be criminalised.

The application to this case of section 295A, which comes close to a 'blasphemy' law, soon turned out to be controversial, however. For prosecution under section 295A, it is required to demonstrate malicious and deliberate intent to outrage religious feelings. In this case, however, no reference to any religious belief or religion was made in the first place: the comments may have upset Thackeray's followers but they were by no means disrespectful to any religion or religious belief as Thackeray was a political leader.

This was, therefore, later changed to section 505(2), which deals with promoting class enmity.<sup>96</sup> Section 505(2) is more convenient to use because it requires 'intent' *or* 'likelihood' of promoting enmity to be demonstrated – not both. This means that, even if the intent of promoting class enmity is missing, as long as the likelihood is present, the accused is liable to being prosecuted. Moreover, the provision says nothing about thresholds or the amount of likelihood, the public nature of the statement, incitement to violence and/or hostility, etc. Because of the absence of criteria and precise thresholds, this provision could be used to label a wide range of statements as hate speech. It, thus, allows to criminalise what may have been only an innocuous statement – or even a well-intended one – on the grounds that it is 'likely' to promote class enmity. Indeed, Dhada's Facebook status did not seem to pit any two classes against one another. The charge seemed to have been motivated at least in part by the fact that Thackeray was a Hindu leader and Dhada, a Muslim woman. It is clear from the post that she was writing as an ordinary citizen, not as someone driven by communal ideology. The law, however, does not require the context to be taken into account before applying the hate speech provisions, section 505(2) and section 153A (discussed in the previous case). In fact, since 'likelihood' of promoting class enmity is sufficient to be booked under this section, one could well argue that it actively *discourages* taking context into account.

The question of thresholds is particularly important because of a peculiar challenge that the Internet has thrown up and which this case illustrates very clearly. While the distinction between the public and the private has always been tenuous, the Web 2.0 revolution seems to have disrupted it even further. Is posting your political opinions on a closed Facebook profile the equivalent of writing a letter to your parents which you know will be passed around among family and friends? Is it the equivalent of expressing your views in a newspaper? Is it the equivalent of attracting an audience on purpose and delivering a speech to them? Does this arrest mean that anything that you post on Facebook is meant

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<sup>96</sup> Singh D. and Parmar R. (2012). 'How the nightmare unfolded'. *Mumbai Mirror*, 20 November, <http://www.mumbaimirror.com/printarticle.aspx?page=comments&action=translate&sectid=2&contentid=2012112020121120045227351c11d0b74&subsite=>.

for public consumption and can be used against you? People may write things on social networking sites that are politically incorrect, blunt or even acerbic, to express their disgust at events around them, especially events that they have little or no control over. Should one be wary of doing so even if one does so in a closed space? In this case, the complainant was not on the friends list of either Shaheen Dhada or Renu Srinivasan: he was shown the screenshot of the post by someone else – something which arguably was an act meant to provoke. Who was at fault here, if anyone? Dhada, for making the post for what she thought was a limited audience, or the person who shared it with others known to probably take offense, thus arguably invading the girls' privacy as well?

Publicness has long been one of the thresholds to determine whether or not an expression constitutes hate speech. The time has certainly not come to give up on it, but if we are to continue to promote and strengthen freedom of expression on the Internet, thinking through in greater detail what publicness in the Internet age entails will clearly be of great importance.

The arrests led to the sequence of events referred to earlier in this paper: the Information Technology Ministry issued 'tougher' guidelines for arrests to be made under the controversial section 66A of the IT Act; India's Supreme Court admitted a public interest litigation challenging the constitutionality of the section; Aseem Trivedi, the cartoonist who is a directly affected party of section 66A, went on hunger strike for over a week; a government-owned telecom provider's website was hacked by hacktivist collective 'Anonymous' in support of Aseem Trivedi's fast; and the Indian Parliament took up a discussion on section 66A.<sup>97</sup>

The arrests seem to have been made under pressure and even led to two of the police officers involved being suspended.<sup>98</sup> The charges on the two women were dropped after about a month.<sup>99</sup> But the question is, why have laws that give sweeping powers to police in the first place? Although the Minister for IT issued guidelines restricting who can use section 66A, the section is still cognisable and instances of misuse following the guidelines have surfaced. Unless the guidelines are written into the law, they do not have the same force as the law.<sup>100</sup>

Moreover, it can also be questioned to what extent the punishment of the police officers was fair. Supported by the existence of laws such as section 295A, 505(2) and 153A of the IPC, threats of violence made by the Shiv Sena in Mumbai are often real, as the ensuing violence on Dhada's uncle's clinic evinces, and actual instances of violence are often not dealt with convincingly. One can therefore argue that the two police officers were simply made scapegoats in a situation that really was the outcome of a much larger problem – one in which fairly broad restrictions on the right to freedom of

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<sup>97</sup> References in footnotes 13-17 supra, Op. cit.

<sup>98</sup> Gottipati S., and Kumar H. (2012). 'Police Who Made Facebook Arrests Suspended'. *New York Times*, 27 November, <http://india.blogs.nytimes.com/2012/11/27/police-in-mumbai-facebook-arrests-suspended/>.

<sup>99</sup> - (2013). 'No charge sheet against Palghar girls'. *The Hindu*, 29 November, <http://www.thehindu.com/news/national/no-charge-sheet-against-palghar-girls/article4146343.ece>.

<sup>100</sup> Shora S. R. (2012). 'Post-Guidelines India: 8 reasons why the new guidelines are not enough', *Internet Democracy Project*, 20 December, <http://www.internetdemocracy.in/2012/12/20/post-guidelines-india-8-reasons-why-the-new-guidelines-are-not-enough/>.

expression to protect the sentiments of various communities constitute perhaps only a small, but definitely very important component. As long as high thresholds to charge people under these provisions are not firmly established, the likelihood that the number of arrests under these sections for online expression will continue to only increase is considerable – even if extreme cases such as that of Dhada might perhaps be a thing of the past.

## Morality and 'Women's Modesty': The Air India, Ambikesh Mahapatra and Henna Bakshi Cases

Following the public outrage over the arrests of Shaheen Dhada and Rinu Srinivasan in Mumbai, a relatively older case came to the fore again, drawing attention to both the problems with section 66A of the IT Act and the spurious use to which the various obscenity provisions in Indian law are at times put.

Two Air India employees, Mayank Mohan Sharma and KVJ Rao, who were active members of the Air India Cabin Crew Association (AICCA), were arrested in May 2012 for posting objectionable content on the Internet. According to a report in *The Hindu*, the complaint was a result of employee union rivalries.<sup>101</sup> It turns out that conversations in closed groups on Facebook and Orkut were presented to the police out of context. In these conversations, the accused had allegedly uploaded 'lascivious' and 'defamatory' content against the complainant Sagar Karnik (also an Air India employee) and politicians, threatened the complainant with death, and insulted the national flag and the Supreme Court. The two men were booked under sections 66A and 67A of the Information Technology Act, section 506(2) of the IPC and section 2 of the Prevention of Insults to National Honour Act, 1971, by investigating officer Inspector Sunil Ghosalkar of the Cyber Police Station.

Section 67A of the IT (Amendment) Act prescribes 'punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form'; section 506(2) of the Indian Penal Code deals with criminal intimidation; and section 2 of the Prevention of Insults to National Honour Act, 1971, deals with insult to the Indian national flag and the Constitution of India. Sharma and Rao were detained on the night of 10 May, 2012 and formally arrested on the morning of 11 May, 2012.

The problems with the arrest of Rao and Sharma were many. First, it seems that once again, the police acted under pressure of powerful people, with the legal process being used to settle personal scores between union members. It turns out that former Shiv Sena trade union leader and now-member of the Nationalist Congress Party (NCP) Kiran Pawaskar had filed a complaint against Mayank Sharma and KVJ Rao in 2011. However, the duo was arrested on a complaint by AICCA assistant treasurer, Sagar Karnik, filed in March 2012. Rao alleged that the arrests on Karnik's complaint were made under pressure from Kiran Pawaskar, who is also a member of the legislative council in the Maharashtra coalition government comprising Congress and the NCP and a patron of the AICCA.<sup>102</sup> On a *Headlines Today* show, Sharma also revealed that he had seen a 'reminder' to the police on Pawaskar's letter head, asking for tough punishment for the accused. It is not clear when this reminder was sent but, if true, it adds weight to Rao's allegations that Pawaskar pressurised the police to get the duo arrested.

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<sup>101</sup> - (2012). 'Vendetta for trade union rivalry?'. *The Hindu*, 25 November, <http://www.thehindu.com/news/national/vendetta-for-trade-union-rivalry/article4130957.ece>.

<sup>102</sup> Chaturvedi A. (2012). 'Mr Rao alleged the police acted under political pressure from NCP politician Kiran Pawaskar'. *NDTV*, 26 November, <http://www.ndtv.com/article/india/arrested-for-facebook-posts-on-politicians-they-spent-12-days-in-jail-297359>.

Second, also once again, it seemed like the police failed to do due diligence, raising questions about the standards of investigation in cyber crimes. On the Headlines Today show, Sharma and Rao said that they had shared a joke from a comedian's Facebook page which was shared by *lakhs* of people on the Internet.<sup>103</sup> They had also distorted the Congress party's flag – not India's national flag – to express their anger against politicians. The Congress party flag looks very similar to the national flag; however, unlike the national flag, which has a wheel at the centre, the Congress flag has the image of a hand facing the onlooker at the centre. The image meme showed the Congress flag as normal before the election but after the election, the hand was replaced by a middle finger. The meme was a viral hit on the Internet and is shared even now. This was thus a very clear case of misuse of the Prevention of Insults to National Honors Act under political pressure, arguably facilitated by negligence on the part of the police in exercising its duties. As noted when discussing the case of Aseem Trivedi, revoking the Insults to National Honor Act may not be a reasonable thing to do in India. However, the application of National Honor Act was done here without application of mind.

Rao also alleged that the content of the posts was not reported to the police in its entirety but was 'mutilated'. On the Headlines Today show, Kiran Pawaskar read out the harsh comments, allegedly made by Sharma and Rao, against top politicians of the country, including a post saying 'politicians should be bombed'. Rao alleged that Pawaskar was quoting things out of context and that his 'can you kill everybody?' was a rhetorical question which was misconstrued. If this is true, then due diligence on the part of the police, again, was missing. In addition, according to the report in The Hindu referenced above, a series of threats and counter threats between Rao and Karnik seems to have been taken as evidence for slapping section 506(2), which deals with criminal intimidation, on Rao. Again, this means that facts were presented only in part to the police, so as to indict Rao alone, even though threats were being exchanged from both sides. Rao also said on the show that since the FIR was filed in March, 2011, the allegedly objectionable posts were much older at the time of arrests, which were made in May, 2012. This indicates that it would have been very difficult for the police to demonstrate an actual threat or danger to the lives of politicians at the time of arrest.

That it is so easy to indict someone with conversations presented in part, rhetorical questions distorted to look like threatening statements, etc., and to thus fool the police in Mumbai, which is supposed to have an advanced cybercrime cell, raises serious doubts about the effectiveness of the process elsewhere in the country. In such circumstances, the existence of a section such as 66A of the IT Act is of particular worry.

What we want to draw particular attention to here, though, is the use in this case of section 67A of the IT Act, on 'punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form'. In contrast to 66A, section 67A is non-bailable. What piece of content exactly attracted this charge is not clear. However, interestingly, section 67A was not invoked while registering the FIR but was added by hand by the investigating officer while seeking remand of the duo. This was

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<sup>103</sup> Sawant G. C (2012). 'Your Rights, Facebooked?'. *Headlines Today* (reproduced on *India Today*), 23 November, <http://indiatoday.intoday.in/story/mumbai-men-face-arrest-offensive-comments-congress-facebook/1/234402.html>.

presumably done to ensure that the duo do not get bail. Consequently, they remained in confinement for twelve days. When the duo was presented before the magistrate for the second time, the police apparently (as Sharma also said on the TV show) presented a copy of the original FIR, on which there was no non-bailable section. When the fact that section 67A was added came to the notice of the judge, bail was granted to them finally on 22 May, 2012.<sup>104</sup> Upon arrest, Sharma and Rao had had their phones, laptops, work ID cards and passports seized, and they had to approach the Bombay High Court to seek the release of their passports. After getting hold of their travel documents, they were finally reinstated on 27 November, 2012. They had been under suspension from 11 May, the date of arrest to 22 May, the date of release. All this while, they had been receiving their salary minus allowances.

Finally, on 30 November, 2012 the police registered a counter complaint against Sagar Karnik for ‘provocative and threatening messages’ and for having misled the police earlier<sup>105</sup> – that is, after the issue received media attention, which suggested the use of pressure by the complainants and harassment caused to the accused.

Rao and Sharma's was not the first case, however, in which morality provisions of Indian law were mobilised in ways that seemed inappropriate. On the night of 12 April, 2012 Ambikesh Mahapatra, a professor at Jadavpur University in the eastern Indian state of West Bengal was arrested and spent the night in lock-up for having emailed a ‘cartoon’ of the West Bengal Chief Minister, Mamata Bannerjee to various people. The so-called cartoon was in fact an image meme which ridiculed the Chief Minister for having sacked Dinesh Trivedi, who was serving as the Minister for Railways in the Central Government.<sup>106</sup> Dinesh Trivedi, a member of Bannerjee’s party, Trinamool Congress, which is an ally in the UPA government led by Congress at the Centre, took an independent stand on the Railway Bill by introducing a fare hike in the Railway Budget presented by him to the Parliament on 14 March, 2012. Opposed to the fare hike, his party President, Mamata Bannerjee forced Trivedi to resign.<sup>107</sup> As reported by the Hindustan Times:

The spoof, which is being widely circulated on the internet, has lines from [a Satyajit Ray] film, in which a boy called Mukul is duped by two criminals into believing that they caused a ‘wicked man’ — who is actually a good person — to ‘vanish’. In the spoof, the ‘wicked man’ who has ‘vanished’ is former railway minister Dinesh Trivedi, forced out of office by Banerjee in March.

The Hindustan Times also reported that, according to Jadavpur University sources, police arrived at the scene when the Trinamool Congress supporters were heckling the professor. Besides Mahapatra, his

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<sup>104</sup> Menon M. (2012). ‘In midnight drama, two AI crew members were held under IT Act’. *The Hindu*, 24 November, <http://www.thehindu.com/news/national/in-midnight-drama-two-ai-crew-members-were-held-under-it-act/article4130804.ece>.

<sup>105</sup> - (2012). ‘FB arrests: FIR against Air India union leader for misleading police’. *Firstpost*, 3 December, <http://www.firstpost.com/business/fb-arrests-fir-against-air-india-union-leader-for-misleading-police-542639.html>.

<sup>106</sup> - (2012). ‘Professor arrested for poking fun at Mamata’. *Hindustan Times*, 13 April, <http://www.hindustantimes.com/India-news/WestBengal/Professor-arrested-for-poking-fun-at-Mamata/Article1-839847.aspx>.

<sup>107</sup> - (2012). ‘Dinesh Trivedi resigns as Railway Minister, Mukul Roy likely to replace him’. *Jagran Post*, 19 March, <http://post.jagran.com/dinesh-trivedi-resigns-as-railway-minister-mukul-roy-likely-to-replace-him-1332083036>.

neighbour Subrata Sengupta was also arrested. Both were taken to the East Jadavpur Police Station and released on a personal bond of Rs. 500 each. The police slapped sections 500, 509 and 114 of the IPC, and sections 66 A and B of the IT Act on both of them. It must be noted that all the sections slapped on them were bailable, meaning that they could have obtained immediate bail upon arrest in the police station itself and that there was no need for them to be produced before a magistrate before bail could be obtained; however, this was concealed by the police.

Apart from section 114, the application of all other sections in this case raises questions about the regard of the police for the right to freedom of expression. Section 114 of the IPC is purely procedural in nature. It states:

114: Abettor present when offence is committed.--Whenever any person who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

This section, thus, appears to have been used to indict both Mahapatra and his neighbour Subrata Sengupta, a retired engineer.

Turning to the substantive charges in the FIR, as discussed repeatedly in this paper section 66A of the IT Act criminalises sending of messages that are grossly offensive or of menacing character through electronic medium. Again, the application of this section in this case is highly questionable, pointing at the easy misuse that an overly broad section facilitates. Moreover, as in the Shaheen Dhadha and Air India cases, arrests at night were made even in this case to ensure that the accused remain 'detained' overnight and can be declared 'arrested' in the morning. As noted earlier, section 66A is cognisable, which means that the accused can be arrested without a warrant.

Section 66B of the IT Act reads as follows:

66B: Punishment for dishonestly receiving stolen computer resource or communication device.--Whoever dishonestly received or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

It is not clear what prompted the use of this section.

Section 500 of the IPC deals with defamation. It must be noted that the meme merely presented the events leading to Dinesh Trivedi's resignation in a comic way, using pictures of Mamata Bannerjee and Dinesh Trivedi interspersed with lines from a dialogue borrowed from Satyajit Ray's film. It reflected an opinion which was already being widely discussed in the media in a light-hearted manner. The allegation that the 'cartoon' was slanderous or defamatory is, thus, difficult to uphold, as the meme did not present any information that was not known already – it only expressed an opinion (who was the 'good man' who was made to vanish and who was 'wicked') about the events. Once again, criminal defamation was mobilised to silence criticism of a person with power.

Equally problematic is the application of section 509 of the IPC to this case, which prescribes punishment for ‘word, gesture or act intended to insult the modesty of a woman’. The pictures used in the image spoof showed Banerjee in her trademark white cotton sari. They were in the public domain already and did not appear to be indecent or immodest in any way, nor was there anything in the representations of the men in the meme that could be considered particularly ‘insulting’ to the ‘modesty of a woman’. The fact that Banerjee is highly privileged of course does not mean that this section cannot be invoked for her protection, but the fact that there was nothing sexist or sexually offensive or obscene about the pictures arguably should. Legal provisions intended to provide women with protection against harassment should not be used to curb political criticism. It is regrettable that this section was invoked to protect one of the country's most powerful politicians.

When Mahapatra was first arrested, Mamata Bannerjee said that conspiracies would not be tolerated. Sections 500 and 509 of the IPC were later dropped from the charge against Mahapatra.<sup>108</sup> Not only that, the Human Rights Commission of the state took *suo moto* cognisance of the arrests and recommended departmental proceedings against two police officers of the East Jadavpur police station who were deemed responsible for his arrest. The Human Rights Commission also directed the state government to pay a compensation of Rs. 50,000 to both of the accused.

Morality provisions have not only been invoked to book men, however; in the last case that we want to discuss in this section – and paper – it was a woman who was charged with obscenity. In September 2012, Henna Bakshi, a young woman in her twenties who claims to be a recipient of the Geeta Chopra Bravery Award for nabbing a burglar long back, was booked for using abusive language in her posts on the Chandigarh traffic police's Facebook page.<sup>109</sup> She, along with Kamalpreet Singh who supported her comments on the Facebook page, was booked under various sections of the IT Act at Industrial Area Police Station on a complaint by traffic police personnel. Kamalpreet Singh is based out of New Zealand.<sup>110</sup>

Henna Bakhshi's car was stolen from her friend's place and she alleged that the process to get an FIR registered was ‘stressful’ and that police had not bothered to inform her about the progress of her case. The Hindustan Times reported that the following conversation took place on the Traffic police page between Bakhshi and the police:

*Henna Bakshi:* I have spoken to all ur f#@\*#n DSPs, ASIs and SHOs.. u ppl think um some uneducated fool who doesn't kno the law?? Will bash u guys up in local n national newspapers starting this week... How can a car be picked up frm outside a corner house on a busy street without u guys being involved If we guys can give in to ur in-numerous n pointless greed of bribes web it's not even our fault... We can also

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<sup>108</sup> Singh S. S. (2012). ‘Some allegations against Mahapatra dropped’. *The Hindu*, 13 October, <http://www.thehindu.com/news/national/some-allegations-against-mahapatra-dropped/article3992304.ece>.

<sup>109</sup> - (2012). ‘Woman booked for comments on Facebook’. *Times of India*, 17 September, [http://articles.timesofindia.indiatimes.com/2012-09-17/social-media/33901476\\_1\\_bravery-award-facebook-page-comments](http://articles.timesofindia.indiatimes.com/2012-09-17/social-media/33901476_1_bravery-award-facebook-page-comments).

<sup>110</sup> - (2012). ‘Henna's co-accused based out of NZ’. *Hindustan Times*, 17 September, <http://www.hindustantimes.com/Punjab/Chandigarh/Henna-s-co-accused-based-out-of-NZ/SP-Article1-931569.aspx>.

bash u guys up... No cop or traffic cop is clean...I will protest outside all ur offices unless u move ur lazy heavy bribed a..e. n take some ..f#@\*#n action.

*Traffic police:* Henna Bakshi you are cautioned not to use such words on CTP/FB page and be a sensible citizen. Otherwise criminal proceedings will be initiated.

*Henna:* Lol wat else can I expect frm the police..Lol..Catch the criminals not the victims..These are ur real colors..Giving warnings to a heartbroken n frustrated victim..Can't u do any better??!! I doubt<sup>111</sup>

Bakshi and Singh were booked under sections 66A and 67 of the IT Act. As Bakshi's comments can be considered 'offensive' and were indeed meant to cause 'annoyance', it can be argued that they clearly fall within the purview of section 66A. With this, however, Bakshi's case also is an excellent illustration of the potential harm of the overly broad framing of 66A. Though her message was framed in an inappropriate manner, her intent was clearly to hold the police accountable. This is not something for which, in a democracy, one should find oneself subject to a criminal complaint.

In addition, Bakshi was also booked under section 67 of the IT Act, 'punishment for publishing or transmitting obscene material in electronic form'. The section states:

67. Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

While it is often claimed that provisions regarding obscenity are to protect women from exploitation, the fact that Bakshi was booked under this provision for the mere use of unparliamentary language shows clearly that what this section in fact intends to do is to protect morality, and through this, a particular set of power relations.<sup>112</sup> Even if one considers that to be a valid purpose, however, it can be argued that the application of this provision in this case makes a travesty of the law. IPC provisions with a wording similar to that of section 67 of the IT Act have been drawn on to ban works of art that were infused with sexual references throughout. Bakshi's posts, in contrast, had all of two words that can be considered to have a sexual connotation.

Interestingly, section 294 of the IPC is intended to deal with just such content as that of Bakshi's post. The section reads:

294. Obscene acts and songs.--Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

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<sup>111</sup> Sharma M. (2012). 'Damming evidence against Henna'. *Hindustan Times*, 20 September, <http://www.hindustantimes.com/Punjab/Chandigarh/Damming-evidence-against-Henna/SP-Article1-932753.aspx>.

<sup>112</sup> For more on the history and place of obscenity provisions in Indian law, see Padte R. K and Kovacs A. (2013), Op. cit.

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

It is noteworthy that the punishment for offences under section 294 of the IPC is considerably lower than those under section 67 of the IT Act. Seeing that thresholds for criminal prosecution should be particularly high where expression concerns public officials in the exercise of their duty, it remains questionable, however, whether Bakshi should have been charged at all. Reportedly, the police have now said that they'll be considerate in handling the case.<sup>113</sup> The Tribune has quoted the police as saying:

The police does not wish to victimise anyone. However, young people must also realise that the authorities cannot be treated in a humiliating manner like in this case.

Legally, it's a fit case for us. However, we are trying to figure out what led the youngsters to use such words against the police. We want that such instances should not occur in the future.

For answers, the police might need to quite literally, for once, simply read the writing on the wall.

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<sup>113</sup> Sareen A. (2012). 'Police may go soft on Henna'. *Tribune India*, 17 September, <http://www.tribuneindia.com/2012/20120918/cth1.htm>.

## Conclusion and Recommendations

In this paper, we have tried to reach a better understanding of the ways in which criminal law in India might undermine freedom of expression on the Internet by examining in great detail seven cases that received widespread attention in the media because the application of criminal law in these cases was so controversial. That section 66A of the IT Act is a problematic provision has been long recognised now. Our research confirmed this finding: section 66A played a prominent role in five of the seven cases that we studied. That the police are quick to use section 66A to criminalise online expression should not come as a surprise. Its vague wording to describe punishable offences, often argued to be unconstitutional; its broad reach, encompassing not only one-to-one but one-to-many communication as well; and its cognisable nature together ensure that section 66A can be considered potentially applicable in a wide range of cases. In some cases, it even effectively creates a new crime, as provisions criminalising equivalent acts offline cannot be found.

But it would be a mistake to think that section 66A is the only problematic provision in India's criminal law from the perspective of freedom of expression online. This research identified five additional areas of tension – legal provisions that for a variety of reasons have at times been effectively deployed to undermine Indian's right to free speech.

A first area is that of defamation law. Truth is, at present, recognised as a defense in defamation cases only where it serves the public interest. This is problematic, because what constitutes the public good is not always easy to deduce, nor is it defined in the law. It is also problematic because as a result, the law effectively protects those in positions of power, who are more likely to have the resources to engage in litigation over periods of several years and thus silence those critical of them, even if only in the course of litigation. The Internet allows people who, hitherto, were not able to publicise their opinions, to now express their opinions and thoughts freely to audiences of a potentially considerable size. In their current form, India's defamation laws have the potential to have a significant chilling effect on this new-found potential. In a case filed against Maheshwar Peri and *Careers360* magazine in Uttarakhand, Justice Sudhanshu Dhulia argued that if claims made were found to be true, defamation cases should not be admissible. A recognition of truth as a defense in all circumstances in defamation cases would indeed go a long way in ensuring the continued protection of the Indian people's right to freedom of expression. A strong case for the dismissal of such cases at an early stage exists.

A second area of concern is that of laws intended to protect the government as well as national symbols. Both in Aseem Trivedi's case and in Sharma's and Rao's case have we seen political misuse of provisions meant to protect the Indian nation-state. Accusations under such provisions are particularly insidious as they recast political criticism into questions regarding the accused's loyalty to the country. In the Internet age, they have also become so much more easy to make, as evidence of expression is often readily available. In a confident democracy, sedition provisions should have no place in the law, and it is recommended that this provision is scrapped at the earliest. Where the Prevention of Insults to

National Honour Act is concerned, it is recommended that at a minimum, far higher thresholds are put into place for complaints filed by those who have a clear political affiliation themselves. Acts such as these should be at no point used to delegitimise valid political criticism.

A third area of laws that our research called attention to are those that aim to protect the sensitivities of and relations among India's many communities. Seeing the size and diversity of the country, it is recognised that such provisions can have a positive role to play. However, at present they are framed in such a way that they end up severely undermining the right to freedom of expression, especially of those whose voices have been marginalised, be it within their own community or within society at large. While these tensions have always been present in the laws in question, they are brought to the fore particularly starkly now that the Internet has the potential to extend substantive enjoyment of the right to freedom of expression to ever larger sections of the population. To guarantee that all can make the most of this opportunity, section 295A of the IPC, which comes close to a blasphemy law, should be scrapped. Sections 153A and 505(2) of the IPC should be strengthened by including high thresholds for prosecution, including consideration for the unequal power relations among different communities and their individual members. Moreover, if sections 153A and 505(2) are to have a positive effect on the cohesiveness of society, a recognition of structural and historical discrimination should be at the heart of their framing and application. In order to end the misuse of vague laws such as these, it is imperative that they be made more precise.<sup>114</sup>

A fourth area of criminal law that has been used controversially is, somewhat surprisingly, that of laws seeking to protect morality and women's modesty. In three out of the seven cases investigated here, such provisions were drawn on, without there being an evident reason to do so – or at least not a strong one. This illustrates very clearly the disciplining nature of such laws: rather than regulating morality, they seek to produce it. To avoid such instances from occurring, nothing less than a fundamental overhaul of the law is necessary, taking as its very starting point not abstract notions of obscenity or morality, but women's very own agency and consent. This is a long-drawn process, however. Until then, instances of misuse of these provisions are likely to continue to occur.

Finally, questions around intermediary liability and their treatment by the law have emerged as an important area of contention as well. When in 2008, section 79 of the IT Act was reframed to provide a stronger safe harbour to intermediaries, there was a lot of optimism that with this, the question of intermediaries' liability had largely been settled in India. With the issuing of the IT Rules in 2011, followed by two court cases against intermediaries later that year, it became clear that that, unfortunately, is not the case. Weaknesses in the rules and loopholes in the law continue to create a

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<sup>114</sup> Due to our methodology, one of the IPC sections that we haven't highlighted is section 298, as it doesn't make the news very often. However, the concerns noted above and elsewhere in this paper apply to this section as well. It reads as follows:

298. Uttering words, etc., with deliberate intent to wound the religious feelings of any person.- Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

landscape of insecurity for intermediaries in India. That they are facing charges under section 295A of the Penal Code, which requires government sanction for prosecution, is perhaps the best illustration of this. It would be a mistake, however, to think of issues of intermediary liability as a concern for businesses only. As we all, knowingly or unknowingly, make use of a wide range of intermediaries while expressing ourselves online, the legal framework for intermediaries affects all of us and should be considered at least in part reflective of the strength of our own right to express ourselves freely online.

The gains and losses that come with the above reported weaknesses of the Indian legal system are not, of course, distributed equally among all Indians. The various case studies discussed in this study clearly indicate how the law can be manipulated by powerful entities in particular, to thwart criticism and investigative reportage, silence political opponents and, in that way, attempt to control the narrative. Though the government and police have been made parties in the case against the intermediaries, and the police also initiated the complaint against Bakshi, what stands out in the study is not the role of the government as such, but that of those with power in society, often including political power or connections. In the cases of Aseem Trivedi, Ambikesh Mahapatra, Mayank Mohan Sharma and KVJ Rao and Shaheen Dhada, the complaint was each time filed by individuals with affiliations to political parties. In that of IIPM, powerful business interests were the driving force behind the complaint.

Police behaviour frequently further exacerbated the power imbalances between the parties in a complaint, by not exercising due diligence; by not informing people that the sections under which they were booked are, in fact, bailable; and by, in several cases, detaining people in the evening so that they have to spend the night in the police station before being formally arrested the next morning. This shows serious disregard for the rule of law. Police also are frequently the first point of misapplication of the law. This is particularly problematic as arrests are frequently at their discretion.

Interestingly, in all of the case studies, one, some or all of the sections were later dropped. Even more, in at least three of the cases discussed here – Shaheen Dhada's, Ambikesh Mahapatra's and *Careers360* – the accused stood vindicated. But by then, the damage often has already been done. For example, traumatised by their ordeal, Shaheen Dhada and her friend, Rinu Srinivasan deactivated their Facebook profiles temporarily – an extreme form of self-censorship.<sup>115</sup> Rinu Srinivasan was worried, for good reasons, that the arrest will hurt her career prospects. The bias towards the powerful of the current system does not miss its (chilling) effect.

Apart from the legal reforms indicated above, it is evident from this study that establishing and applying clear and high thresholds will be essential for protection of the right to freedom of expression in the Internet era. The crucial role played by people in powerful positions or connected to powerful networks in these cases also reminds us again that public figures in particular should be held to especially high standards. Although every citizen has the constitutional right to seek judicial remedies, abuse of the judicial process to favor the undue interests of an individual or a business is clearly

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<sup>115</sup> - (2012). 'I will not activate my Facebook account again'. *India Today*, 20 November, <http://indiatoday.intoday.in/story/i-will-not-activate-my-facebook-account-again-says-shaheen-dhada-india-today/1/230073.html>.

unacceptable and courts need to take notice of this. Courts must use their good sense to rule out any intention of bullying through prosecution before proceeding in cases related to speech and expression.

Where defamation is concerned, however, this is arguably not enough. Seeing the way in which criminal defamation provisions have been used to harass and silence critics and dissents of those with power and resources, defamation should be decriminalised in India altogether – as has been done elsewhere.

There is also clearly a need for police reform. Often believed to be mired in corruption, the current system seems to incentivise favoritism, thus affecting the morale of the police. The only way to protect speech from the police is to restore their dignity and respect their role, so that they feel free to apply their mind and are not obliged to please powerful entities. In the Shaheen Dhada and Ambikesh Mahapatra cases, action was taken against police officers after the cases got media attention. However, the fact that the police were acting under pressure – covert or overt – from certain powerful entities was not sufficiently acknowledged.

But increasingly, however, what we should perhaps also direct our attention to, to ensure the continued protection of the right to freedom of expression on the Internet, are non-legal strategies. In most of the cases discussed in this study, the judicial process appears to have been abused to ‘teach someone a lesson’ – that is, in a reactionary impulse to seek legal recourse whereas a range of alternative strategies could be explored. In the Henna Bakhshi case, for example, the admin of the Chandigarh Police Facebook page could have deleted or reported the abusive comments, banned the users or ignored them.

Indeed, it is important to increasingly promote the idea that one can counter rumour with information. For powerful and not so powerful people alike, the first resort should not be the law, but more speech. US President Barack Obama’s *Attack Watch* website is a fine example of how public personalities can productively deploy such a strategy.<sup>116</sup> It is used to track various allegations leveled against Barack Obama and deconstruct them. The website also allows viewers to share the explanations (counter speech) across social networking platforms – basically exploiting the power of the same medium to promote counter speech which can be used to circulate rumor. Not just that, the site also takes the opportunity to spread positive speech using the section called ‘Obama’s promises kept.’ It allows concerned individuals to report criticisms of Obama’s conduct, thereby giving ordinary users of the Internet the power and ownership to counter rumor with information.

The Internet is often described as a potent tool for political empowerment. To keep this potential alive, it is essential that weaknesses in existing criminal law provisions affecting freedom of expression are tackled head-on and that law enforcement at various levels is strengthened while held to high standards. It is also crucial that all of us develop non-legal strategies to deal with speech that we may find offensive, except in the most extreme cases. Online as offline, the primary answer to bad speech should be more speech.

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<sup>116</sup> <http://www.barackobama.com/truth-team/attack-watch>. Retrieved on 3 March, 2013.

## Appendix A. Index of Cases

The Index of Cases lists, in chronological order, cases that concern the application of criminal law to online speech/expression. The current status of cases is not necessarily known. The aim of the Index is simply to document, with information available in the media and online legal archives, cases in which the application of criminal law to curtail freedom of expression online in India has been considered contentious. The table includes cases upto March 2013.

Date (approx)	Description	Offence(s)
2000, 2001, 2011	<p>On 15 December, 2000, Medha Patkar (NBA activist) filed a criminal defamation suit against VK Saxena (head of an Ahmedabad based NGO) &amp; Shekhar Gupta (editor-in-chief) over advertisements and articles against her. Court had framed charges against Saxena.</p> <p>On D3 August, 2011, Patkar withdrew the defamation case she had filed against Shekhar Gupta, after her counsel placed on record his apology published in his newspaper on 9 May, 2011.</p> <p>In 2001, Saxena filed a defamation suit against Patkar (Section 500) over a news item run by a portal which was allegedly based on NBA's press release. In November 2011, a Metropolitan magistrate finally framed charges against Patkar.</p>	Section 500, IPC (punishment for defamation)
2004, 2005, 2006	<p>A 17-year old student of Delhi Public School captured an obscene video of his classmate &amp; distributed it via MMS. The clip was uploaded by an IIT Kharagpur student to Baazee.com with the help of an electronics firm in Kharagpur. 8 people bought the CD from the portal.</p> <p>The case was a watershed development because it led to the arrest of the CEO of Baazee.com who had to spend time in the Tihar Jail. This case led a huge outcry among businesses. It set precedents for intermediary liability.</p>	<p>Section 292, IPC (sale, distribution, public exhibition, etc., of an obscene object)</p> <p>Section 294, IPC (obscene acts, songs, etc., in a public place)</p> <p>Section 67, IT Act (obscenity in electronic form)</p> <p>The schoolboy faces a charge under section 201, IPC (destruction of evidence)</p>
Between 2004 & 2006	<p>A student of the Air Force Balbharati School, New Delhi, was teased by all his classmates for having a pockmarked face. He decided to get back at his tormentors. He created a website at the URL <a href="http://www.amazing-gents.8m.net">www.amazing-gents.8m.net</a>. The website was hosted by him on free web space. It was dedicated to Air Force Bal Bharti School and contained text material. On this site, lucid, explicit, sexual details were given about various girls and teachers of the school. Girls and teachers were also classified on the basis of their physical attributes and perceived sexual preferences. The website also became an adult boys' joke amongst students. This continued for some time till one day, one of the boys told a girl, 'featured' on the site, about it. The father of the girl, an Air Force officer, registered a case under section 67 of the IT Act, 2000 with the Delhi Police Cyber Crime Cell. The</p>	Section 67, IT Act (obscenity in electronic form)

	<p>police picked up the concerned student and kept him at Timarpur (Delhi) juvenile home. It was almost after one week that the juvenile board granted bail to the 16- year-old student.</p> <p>This was the first case registered under Sec 67 in India.</p>	
2005, 2009, 2011	<ul style="list-style-type: none"> <li>• Management Institute, IIPM, in 2011 sued The Caravan, Google and Penguin for Rs. 500 million over an allegedly libelous article. Gaurav Sabnis, an IBM employee had posted a link to the article in his blog. IIPM sent him a legal notice and pressured IBM into making Gaurav resign by threatening to burn ‘Thinkpads’ (laptops) issued by IBM to IIPM. Gaurav did not take the post down, did not want IBM to be dragged into this, so he quit his job.</li> <li>• In 2005, IIPM filed a case against Rashmi Bansal, editor of JAM, a career magazine who published an article questioning many of the claims made by IIPM. IIPM filed a case against Bansal from Silchar, Assam, even though JAM is based in Mumbai. IIPM managed to get an ex-parte order from the court, forcing Bansal to remove the article from the website. IIPM also filed for damages.</li> <li>• In 2009, Careers360 magazine, published by Maheshwar Peri, carried an article investigating the authenticity of many of the claims made by the IIPM. IIPM, again, filed a case against the magazine and the publisher in Silchar, and obtained ex-parte restraint against them. The IIPM also filed a criminal case against Maheshwar Peri from Uttarakhand, which was subsequently quashed by the High Court.</li> </ul>	<p>Section 499, IPC (defamation)  Section 500, IPC (punishment for defamation)  Section 501, IPC (printing or engraving matter known to be defamatory)  Section 502, IPC (sale of printed or engraved substance containing defamatory matter)</p>
Sept/Oct 2007	<p>Pune police arrested four Bangalore based software engineers — 25 year old Lakshmana Kailash, 23 year old Manjunath Betegowda, 23 year old Harish Shetty and 22 year old Kiran Reddy — for posting an obscene profile of Shivaji on Orkut, in which he was shown clad in female innerwear.</p> <p>It was later found that the arrest of Lakshmana Kailash, who was detained for 50 days, was based on wrong IP addresses provided by Bharti Airtel. Lakshmana then sued Airtel, Maharashtra government and Mumbai police and demanded Rs 20 crore in damages.</p> <p>Lakshmana Kailash K was awarded Rs 2 lakh compensation by the State Human Rights Commission almost two years after he was wrongly jailed for 50 days. The commission turned down Lakshmana’s compensation claim of Rs 20 crores, ordering a ‘reasonable token amount’ of Rs 2 lakh to be paid as damages by Airtel.</p>	<p>Section 295A, IPC (deliberate and malicious act intended to outrage religious feelings)  Section 67, IT Act 2000 (obscenity in electronic form)</p>

<p>Dec, 2007</p> <p>May, 2008</p> <p>June, 2008</p> <p>Sep, 2008</p>	<p>The Pune police arrested 22 year old Gurgaon based IT professional Rahul Krishnakumar Vaid for posting derogatory content about Congress party chief Sonia Gandhi on an Orkut community named 'I Hate Sonia Gandhi'.</p> <p>In June 2008, they also arrested Nithin Chkravarthi Suresh Sahha (22), a resident of Sharan Apartment, Begum Peth in Hyderabad in the same case.</p> <p>The person who formed this community wasn't considered guilty as per the law. The police said that 'hating Sonia Gandhi is a personal opinion of the person who formed the community and having a personal opinion about someone is not an offense as per the law'.</p> <p>The Cyber Crime Cell of the Pune police was later reportedly on the lookout for three youth from Uttar Pradesh, for posting abusive messages involving Sonia Gandhi on Orkut- Rohit Wadhwani, Amit Arya and Ankit Sharma. As of 2008, the Pune police had arrested 16 people from across the country in this connection and were on the hunt for more.</p>	<p>Vaid was charged under section 292, IPC (sale, etc., of obscene books, etc.) and section 67, IT Act (obscenity in electronic form)</p>
<p>Feb, 2008</p>	<p>A fast track court convicted an orthopedic surgeon to a life term for posting obscene videos of his women patients on the Internet. Dr. L Prakash stood convicted of manipulating his patients in various ways, forcing them to commit sex acts on camera and posting the pictures and videos on the Internet.</p> <p>The other three accused -- Saravanan, Vijayan and Asir -- were awarded seven years rigorous imprisonment each apart of a fine of Rs 2,500 per head</p>	<p>Section 4, Immoral Trafficking Act, read with section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, read with section 27 of the Arms Act, 1959 and section 120B(ii), IPC Section 120B, IPC (punishment for criminal conspiracy) Section 67, IT Act (obscenity in electronic form) Attempt to rape &amp; murder (acquitted of these)</p>
<p>Reported in 2008</p>	<p>One of the first cases where the accused was convicted under the IT Act provisions was the case of State of Tamilnadu V. Suhas Kutty. The case related to posting of obscene, defamatory and annoying message about a divorcee woman in the yahoo message group. E-Mails were also forwarded to the victim for information by the accused through a false e-mail account opened by him in the name of the victim. The posting of the message resulted in annoying phone calls to the lady in the belief that she was soliciting. The accused was found guilty of offences under section 469, 509 IPC and 67 of IT Act 2000 and the accused was convicted and was sentenced for the offence to undergo RI (rigorous imprisonment) for 2 years under 469 IPC and to pay fine of Rs.500/-and for the offence under section 509 IPC sentenced to undergo 1 year Simple imprisonment and to pay fine of Rs.500/- and for the offence under section 67 of IT Act 2000 to undergo RI for 2 years and to pay fine of Rs.4000/-.</p>	<p>Section 469, IPC (forgery for purpose of harming reputation) Section 509, IPC (insulting the modesty of a woman) Section 67, IT Act (obscenity in electronic form)</p>

2008	<p>On 27 November, 2008 Chaitanya Kunte wrote a blog post titled 'Shoddy Journalism' criticizing Barkha Dutt's live coverage of the 26/11 attacks on Mumbai. He was hounded by NDTV lawyers to withdraw his post or face legal action. On 26 January, 2009 he published a public apology to Barkha Dutt &amp; NDTV on his blog. He has even deleted his blog. Barkha Dutt is the editor of New Delhi based TV news channel, NDTV</p>	<p>It didn't result in a lawsuit as Kunte apologized and withdrew the allegations.</p>
Aug, 2008 Feb, 2009	<p>Ajith D., a student from Kerala, had initiated an Orkut community critical of the Shiv Sena, a political outfit criticized for its conservative stand. In August 2008, Thane police, acting upon a complaint by a Shiv Sena official, slapped a criminal case upon him. Ajith asked the Supreme Court of India to throw out the criminal case under constitutional Article 19 which guarantees freedom of expression. The apex court declined to do so.</p>	<p>Section 506, IPC (criminal intimidation) Section 295A, IPC (deliberate and malicious act intended to outrage religious feelings)</p>
August 2008	<p>Adarsh Sinha, a computer engineer with HCL had created an email account with the forged identity of Faizab Farooqi and used this account to post messages on an Orkut community. These messages were either defamatory or threatening in nature. The text of this message was initially compiled by Mira Road-based Suresh Shetty, a moderator of the community. Shetty was arrested on 2 August, when the first message was posted.</p>	
April, 2010	<p>Fifty-one-year-old Nandakumar Venkataraman, then on deputation as CEO-designate of Ecole Mondiale International School, Chennai, was employed with Global Indian Foundation's (GIF's) Global Indian International School in Singapore between 2004 and 2007. He was asked to quit after the management discovered alleged financial irregularities in the school's accounts and also found that he had leaked some confidential information.</p> <p>Months after leaving the Singapore school, Venkataraman allegedly co-started a 'fake' blog that supposedly represented parents of children studying at GIIS. Called <i>Global Indian International School Parents Forum For A Better GIIS</i>, this blog carried allegedly defamatory information about GIF and some of its governors, which include former Chief Justice of the Bombay High Court Chadrashekhhar Dharmadhikari, scientist MGK Menon, and former Indian cricketer Chandu Borde.</p> <p>A complaint of defamation was first lodged with the Thane Police against unknown persons in June 2008, and it took almost two years for the cops to track down Nandakumar. Initial inquiries into the matter revealed that the blogs were posted from Singapore, so GIIS lodged a complaint in Singapore too.</p> <p>In April 2010, a team of Thane police visited Nandakumar's house in Chennai and arrested him. They also seized two laptops and his mobile phone, from which the blog posts were made.</p>	<p>Section 66A, IT Act (sending offensive messages in electronic form) Section 66D, IT Act (cheating by personation using a computer resource)</p>

<p>May, 2010</p>	<p>The environmental organization Greenpeace launched a campaign titled Tata vs. Turtle. As part of this campaign it hosted an open poll on its site asking the viewers to vote for the reason ‘why Tatas were let off the hook’. In the second phase of the campaign, Greenpeace created a pac-man styled game. The objective of the game is: you, a turtle, must eat as much healthy food as you can while avoiding the Tata demons that threaten your home.</p> <p>Tata sued Greenpeace for cyber libel (defamation) and trademark infringement seeking Rs. 100 million in compensation. Courts upheld the case.</p>	<p>Section 499, IPC (defamation) Trademark Infringement</p>
<p>Nov, 2010</p>	<p>An FIR was lodged by the Economic Offences Wing of the Delhi Police on the complaint of the President’s Secretariat citing a copy of an article published in the Economic Times, dated 29 November, 2009, which allegedly pertained to the fake use of the names of politically powerful personalities as a domain name on websites. It was further alleged in the said complaint that a website exists with the domain name <a href="http://www.pratibhapatil.com">www.pratibhapatil.com</a> having no connection with the Hon’ble President, which allegedly hawks financial advisory, DVD rentals, education insurance, lingerie and much more. The police made some preliminary enquiry and it was found that the website was got registered by one Joy Antony, Kala parambath, Pathadam House, Kunnappi Hissey Puliyanan, P.O. Angamaly via Kochi, Kerala. The website was found to be hosted from Germany. The website, on which there was no content other than some links to other websites, was taken down.</p> <p>On a mere complaint of the President’s secretariat, an FIR was promptly registered where the preliminary enquiry by the police reveals that no cognizable offence is made out. Simply, a domain name containing the name of the President of India was registered having no content in it except some links of the other websites. There is no offence made out and sections imputed under the Information Technology Act and Indian Penal Code is gross abuse of law</p>	<p>Section 66A, IT Act (sending offensive messages in electronic form) Section 469, IPC (forgery for purpose of harming reputation),</p>
<p>2010, 2011</p>	<p>Qazi Yasir was arrested during 2010 protests, booked under PSA and lodged in Kote Balwal Jail for over one year. One of the charges against him included instigating violence over Facabook. In 2011, he was released very briefly to attend the funeral of his uncle, late Qazi Iman. He was arrested immediately thereafter.</p>	
<p>Sep, 2011</p>	<p>Malini Marmu, a student of IIM-Bangalore committed suicide after her boyfriend, who she recently had a quarrel with, updated his relationship status on Facebook and posted, ‘Dumped my new ex-girlfriend’, ‘feeling relieved’ while she was still friends with him on Facebook. Police booked the boy, Abhishek, under abetment to suicide.</p>	<p>Section 306, IPC (abetment to suicide)</p>

<p>Sep, 2011</p>	<ul style="list-style-type: none"> <li>• Kanwaljit Singh (25), a Jagroan-based software professional was arrested by cybercrime wing of the Punjab State Crime Branch, Mohali for allegedly creating a fake profile of a woman from Sultanpur Lodhi, Kapurthala, on Facebook. The fake profile displayed the woman's phone number and other details. The profile said she was an organiser of a musical dance group and could be contacted on her mobile number and e-mail. The woman started receiving calls on the basis of her profile and she was forced to approach the crime branch. Kunwar Vijay Pratap Singh, SSP State Crime Branch, said the motive behind the crime was to defame the complainant because of some personal enmity. The case was investigated by a team of officers headed by DSP Vibhor Kumar.</li> <li>• A resident of Sector 44 in Chandigarh, Nitin Arora, was arrested for creating a fake Facebook account of a dental student, whom he allegedly loved but failed to strike up a relationship with. In his mid-20s, the accused is presently pursuing a web designing diploma, Punjab police crime branch senior superintendent of police (SSP) Kunwar Vijay Pratap Singh said on Wednesday evening. The accused added the victim's colleagues in college and others as friends on her profile and used to chat with them on her behalf, using vulgar language.</li> </ul>	<p>Sections 66A, IT Act (sending offensive messages in electronic form)  Section 66D, IT Act (cheating by personation using a computer resource)  Section 419, IPC (cheating by personation)  Section 509, IPC (insulting the modesty of a woman)</p>
<p>Sep, 2011</p>	<p>Jammu &amp; Kashmir Chief Minister Omar Abdullah wrote a tweet about Parliament attack convict Afzal Guru when the Tamil Nadu Assembly passed a resolution asking for clemency for the assassins of Rajiv Gandhi (sixth Prime Minister of India). Afzal Guru (who was later hanged in February 2013) was a state subject of Jammu &amp; Kashmir whereas the assassins of Rajiv Gandhi are Tamil by ethnicity.</p> <p>He wrote a tweet saying 'if the J&amp;K assembly had passed a resolution against the death sentence given to Guru as was done by the Tamil Nadu assembly for the killers of Rajiv Gandhi, the reaction would not have been as muted as it is now'.</p> <p>In October 2011, one person named K. Neelamegam filed a petition against Omar Abdullah before the Madras High Court asking the court to direct the Central Bureau of Investigation.</p>	

<p>Nov, 2011</p>	<p>Suhel Seth, advertising professional, sued by corporate giant ITC for Rs. 200 crore over what it called defamatory articles &amp; tweets after Suhel Seth's advertising agency lost the ITC account. Two civil suits, each for Rs. 100 crore, were filed in Bangalore &amp; Kolkata.</p> <p>This case is important mainly because of the parties involved and the amount sought by ITC as damages. It shows that anyone making an outrageous joke on anyone else can be sued for defamation. Suhel Seth never apologized for those tweets but he deleted them and claimed that his Twitter account keeps getting hacked into.</p>	<p>Section 499, IPC (defamation)</p>
<p>Dec 2011</p>	<p>On 23 December, 2011, in a criminal case filed by Vinay Rai, editor of a Delhi-based Urdu daily called <i>Akbari</i>, the Metropolitan Magistrate, Patiala House, directed the Ministry of External Affairs to have summons served on over 21 websites based abroad on the grounds that offences of sale of obscene books and obscene objects to young persons.</p> <p>A civil suit (similar to the one filed by Vinay Rai) was filed by Mufti Aijaz Arshad Qasmi, an Islamic researcher linked to a website run by the Islamic Peace Foundation of India, seeking the removal of allegedly objectionable content from various websites.</p> <p>An ex-parte injunction to get the content removed was issued by a Rohini court</p>	<p>Section 109, IPC (punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment)</p> <p>Section 120B, IPC (punishment for criminal conspiracy)</p> <p>Section 153A, IPC (promoting enmity between groups)</p> <p>Section 153B, IPC (imputations, assertions prejudicial to national-integration)</p> <p>Section 292, IPC (sale, etc., of obscene books, etc.)</p> <p>Section 293, IPC (sale, etc., of obscene objects to young person)</p> <p>Section 295A, IPC (deliberate and malicious act intended to outrage religious feelings)</p> <p>Section 298, IPC (uttering, words, etc., with deliberate intent to wound the religious feelings of any person)</p> <p>Section 500, IPC (punishment for defamation)</p>

<p>Dec, 2011 Jan, 2012 Sep, 2012</p>	<p>On 27 December 2011, Aseem Trivedi received an email from BigRock, the domain name registrar with which his website was registered, saying, 'We have received a complaint from Crime Branch, Mumbai against domain name 'cartoonsagainstcorruption.com' for displaying objectionable pictures and texts related to flag and emblem of India. Hence we have suspended the domain name and its associated services'</p> <p>In January 2012, a case of treason (section 124 A of the IPC) was filed against him in Beed District Court, Maharashtra. Additional charges were brought against him by the Maharashtra Police in Mumbai for insulting India's national symbols, under the State Emblem of India (Prohibition of Improper Use) Act 2005.</p> <p>Aseem Trivedi was remanded to judicial custody till 16 September in Mumbai. In August, a non-bailable warrant was issued in his name and served to his Kanpur residence where he wasn't present. He was charged with sedition for his cartoons displayed at an India Against Corruption rally.</p>	<p>Section 124(A), IPC (sedition) Prevention of Insults of National Honour Act, 1971 Section 66A, IT Act (sending offensive messages in electronic form)</p>
<p>Mar, 2012</p>	<p>Hemanth Nimbalkar, deputy inspector general of police (internal security), filed a complaint with Vidhana Soudha police against former Lokayukta Justice Santosh N Hegde and former additional director general of police (ADGP) Rupak Kumar Dutta for falsely implicating him in a 2009 case.</p> <p>DCP (Central) BR Ravikanthe Gowda told TOI that after seeking legal opinion, police have registered a case against Justice Hegde and Dutta. He said that on 16 March, 2009, an FIR along with source report was registered against him by Naik, the then Lokayukta superintendent of police, Belgaum. The FIR was filed after conducting raids on places, which didn't belong to him. The Lokayukta alleged the complainant owned assets worth Rs 81 lakh and disproportionate to his known sources of income. The total value of seized material included ancestral property owned by his mother Rajani Nimbalkar amounted to only Rs 2.4 lakh, Nimbalkar alleged.</p> <p>The Lokayukta conducted an investigation and filed a B report in the Belgaum court on 22 February, 2012, stating there was no case against Nimbalkar.</p> <p>Explaining the consequences of the raids, the IPS officer pointed out that false allegations made by Justice Hegde and Dutta made it to the web as they were carried by e-papers, websites and blogs and remain available to this day.</p>	<p>Section 66A, IT Act (sending offensive messages in electronic form) Sections 166, 167, 109, 114, 117 and 211 of IPC</p>
<p>13 Apr, 2012</p>	<p>Ambikesh Mahapatra, a chemistry professor at Jadavpur University in Kolkata, the capital of the eastern state of West Bengal, spent the night of 12 April in detention for emailing and posting a cartoon (<i>read image meme</i>) of West Bengal's female chief minister Mamata Banerjee, the founder of the All India Trinamool Congress party (TMC), on Facebook. He was arrested when he tried to report an attack by TMC supporters.</p>	<p>FIR: section 509, IPC (insulting the modesty of a woman); section 499, IPC (defamation); section 66A, IT Act (sending offensive messages in electronic form) Chargesheet: section 66A, IT</p>

	<p>The cartoon (<i>read image meme</i>) alluded to TMC member Dinesh Trivedi's 'forced' resignation as India's railway minister after announcing a fare increase. Newsreports claimed Trivedi had to resign because Banerjee wrote to Prime Minister Manmohan Singh requesting his replacement as railway minister by another TMC leader, Mukul Roy.</p>	<p>Act (sending offensive messages in electronic form) i.e. section 509 and 499 dropped, section 66A retained</p>
May, 2012	<p>K V Janannathrao and Mayank Sharma, cabin crew of Air India, were nabbed and remanded in police custody till 18 May, 2012 for objectionable contents the accused posted on Orkut and Facebook social networking sites.</p> <p>The objectionable content included unparliamentary and derogatory remarks on popular social networking sites against Prime Minister office, National flag, Supreme Court and leaders of opposite employees association.</p> <p>In a recent interview, the duo also alleged harassment at the hands of police. They have been fired due to their legal hassles. In the interview, they said that they had mocked the Congress logo rather than the National Flag (the former bears a close resemblance to the latter). The Congress logo features the National Flag (without the Chakra) and a waving hand. The employees had posted a meme in which the waving hand was replaced by a hand with only the middle finger raised (and other fingers folded). Congress is the longest ruling party since Independence.</p>	<p>Section 66A, IT Act (sending offensive messages in electronic form) Section 2 of Prevention of Insults to National Honor Act Sec 506(2), IPC (criminal intimidation) Section 67A, IT Act (sexually explicit material) was added while they were being presented in front of the magistrate so that they don't get bail</p>
Aug, 2012	<p>A first-year student in Jalandhar was found hanging from a ceiling fan in her hostel room. According to <i>The Times of India</i>, a suicide note discovered in her hostel blames two schoolmates and their insulting Facebook comments for her death. She had been orphaned in 1997 after her parents fell victim to militant bullets in Kashmir.</p> <p>The two schoolmates named in the suicide note, Deepak Saini and Lovepreet Singh, were arrested. The note accused them of using Facebook to harass her online. Police reportedly were unable to find Raksha's computer, but would be checking her Facebook page for evidence.</p> <p>Lovepreet allegedly became upset when Sharma stopped speaking to him and 'began bombarding' Sharma with threatening text messages, including one threatening to 'throw acid on her.' It was the last straw for Raksha when the youths posted an obscene message on her Facebook profile.</p>	<p>Sec 356, IPC (abetment to suicide)</p>
Sep, 2012	<p>22-year old Henna Bakshi, who claims to be winner of Geeta Chopra Bravery Award over a decade back for nabbing a burglar, was booked for using abusive language in her posts on Chandigarh traffic police's Facebook page. She along Kamalpreet Singh, who supported her comments on the FB page, has been booked under various sections of the IT Act at industrial area police station on a complaint by traffic police personnel. Kamalpreet is based out of Australia.</p> <p>Henna's car was stolen from her friend's place and she alleged that</p>	<p>Section 66A, IT Act (sending offensive messages in electronic form) Section 67, IT Act (obscenity in electronic form)</p>

	<p>the process to get an FIR registered was ‘stressful’ and that police had not bothered to inform her about the progress of her case.</p> <p>Reportedly, the police have said that they’ll be considerate in handling the case.</p>	
Oct, 2012	<p>Uploading of some blasphemous picture on Facebook triggered massive protest in Kishtwar district of J&amp;K. Thousands of people gathered in Chatroo township and staged a demonstration. Protesters, witnesses said, attacked local police station demanding immediate action of the youth responsible for the sacrilegious act. The culprits, which also included two government teachers, have been arrested and booked under the relevant provision of criminal law. People insisted that the erring teachers be immediately terminated and booked under Public Safety Act for creating law and order situation in the district. Following an hour long negotiations, the Deputy Commissioner ordered termination of the two government teachers, till pending enquiry.</p> <p>‘The police told the parents that they will give them a clean chit and release the three but that was all done just to maintain law and order and the three remained under arrest,’ said Rajesh Sharma, lawyer of the accused to NDTV.</p> <p>Finally, the three people spent 40 days in jail.</p>	Section 66A, IT Act (sending offensive messages in electronic form)
Oct, 2012	<p>Tamil singer Chinmayi Sripada, who was being harassed on Twitter for her political remarks by several Twitter handles, filed a complaint with the Chennai city police commissioner against 6 Twitter handles. The cyber crime cell of Chennai city police flung into action and tracked the IP addresses and real names of these people. At least two people were arrested in the case.</p>	Section 66A, IT Act (sending offensive messages in electronic form) Section 4, Prevention of Women Harassment Act
Nov, 2012	<p>A Lucknow based lawyer and social activist lodged a first information report (FIR) against popular social networking site Facebook, after his profile was blocked. The report was filed at the ‘cyber crime cell’ of the Lucknow police by Prince Lenin, a resident of Hussainganj here. In his complaint, Lenin alleged that although he had long been a user of Facebook, his profile was recently blocked by the site without so much as informing him or spelling out the reasons for such ‘one sided and unfair action.’</p>	Sections 66 and 84, IT Act
Oct, 2012	<p>An industrialist, S Ravi, was arrested over his tweet saying ‘got reports that karthick chidambaram has amassed more wealth than vadra’. Karthik Chidambaram is the son of senior Union Minister, P Chidambaram. Vadra is the son-in-law of ruling UPA chair, Ms. Sonia Gandhi, and was recently in the news for allegations of corruption.</p> <p>At the time of writing those tweets, S Ravi had nearly 16 followers on Twitter. The police said that they received an email from Karthik alleging defamation by S Ravi. The offense is cognizable (accused has to get arrested &amp; then apply for bail).</p>	Section 66A, IT Act (sending offensive messages in electronic form)

	S Ravi is reportedly an active member of India Against Corruption- an emerging political front which bitterly criticizes the incumbent government.	
Nov, 2012	In October 2012, A. Marx, a Tamil Nadu based human rights activist, filed a PIL before the Madurai bench of the Madras High Court challenging the constitutional validity of section 66A of the Information Technology Act in the wake of arrest of S Ravi on the complaint of Karthick Chidambaram.	
Nov, 2012	Shaheen Dhada, a 21-year old resident of Palghar, Mumbai was arrested for criticizing the bandh being observed in mourning of late Shiv Sena Supremo Bal Thackeray's death. Her Facebook post went like 'People like Bal Thackeray are born and die every day. No one should observe a bandh for that'. Her friend, Renu, who had liked, shared and commented on the post was also arrested. Renu in an NDTV interview said that she deleted the shared post & her comment when she learnt from her friends that Shaheen was being approached by the police. Police initially wanted 14 days' custody but a court refused to grant the same. So, they were released on a personal surety of Rs. 15,000. The arrests are widely seen as being carried out under pressure from Shiv Sena workers.	Section 505 (2) of the IPC (promoting enmity, hatred or ill will between classes) Section 66A, IT Act (sending offensive messages in electronic form)
Nov, 2012	<p>Congress leader Digvijay Singh compared rival politician, Arvind Kejriwal to Indian actor Rakhi Sawant and called both 'hollow'. He wrote this in a tweet saying 'both try and expose but without any substance.'</p> <p>Rakhi Sawant took offence to this and sent a legal notice to Singh through her counsel. She also wrote to the Police Commissioner of Mumbai asking him to take cognisance of the issue and register an FIR against Singh for outraging modesty of a woman/female, charges of passing lewd remarks and eve teasing, abusing, mischief, passing defamatory remark and false statement and rumour and criminal conspiracy etc. Also, section 67A and 69 of Information Technology Act.</p> <p>At the time of this writing, no case has been registered against Singh.</p>	<p>Section 354, IPC (assault on a woman to outrage her modesty)</p> <p>Section 427, IPC (mischief causing damage to the amount of fifty rupees.)</p> <p>Section 500, IPC (punishment for defamation)</p> <p>Section 511, IPC (punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment)</p> <p>Section 67A, IT Act (sexually explicit material)</p> <p>Section 69, IT Act (directions for interception, monitoring or decrypting information)</p> <p>Note: The case was not registered.</p>
Nov, 2012	Writ petition in Allahabad High Court to declare section 66A unconstitutional, filed by UP cadre IPS officer Amitabh Thakur and his wife social activist Dr Nutan Thakur.	

Nov, 2012	A young Delhi based student, from a prominent family of lawyers, filed a PIL in the Supreme Court challenging the constitutional validity of section 66A. The case is still pending before the Supreme Court. Member of Parliament, Mr. Rajeev Chandrashekhar filed an intervention in this case, raising issues of both section 66A and IT Rules in his petition.	
Dec, 2012	Nazimuddin Rafiq Ahmed Khan, an iron dealer of Laljipada in Kandivali (West), Mumbai had contacted the police against derogatory and abusive comments posted on the profile of a Jaipur resident by a fake user which had been 'liked' by others. The comments, Khan said, were in the form of jokes on Prophet Mohammed (PBUH). The police registered an FIR and transferred the case to the cyber crime police station at Bandra Kurla Complex which blocked those Facebook pages.	Section 295A, IPC (deliberate and malicious act intended to outrage religious feelings) Section 153A, IPC (promoting enmity between groups) Section 66A, IT Act (sending offensive messages in electronic form) Section 67, IT Act (obscenity in electronic form)
Dec, 2012	Pintu Sahu, a 20 yr old man in Rourkela uploaded a picture on Facebook showing Hindu god, Hanuman sitting atop a mosque, allegedly the Babri Masjid (which was demolished by a rioting Hindu mob) on the 10 <sup>th</sup> anniversary of the Babri Masjid demolition. The demolition had occurred in Ayodhya, about 800 kilometres from Rourkela, and the Rourkela police had started sensing tension due to the picture.  On 7 December, 2012, Sahu was arrested under various charges.	Section 295A, IPC (deliberate and malicious act intended to outrage religious feelings) Section 153A, IPC (promoting enmity between groups) Section 298A, IPC (uttering, words, sound, gesture with deliberate intent to wound the religious feelings of any person) Section 66A, IT Act (sending offensive messages in electronic form)
Dec, 2012	Jagdish Patel, a young boy in Mumbai's Thane district sent a birthday cake to a girl who he was in love with. The cake, which had a photo of the girl printed on it, reached the girl's home on 26 August, 2012. The girl's parents alleged that the boy had stolen the photo of the girl (that was printed on the cake) from a social networking site and filed a complaint against him.  The police contacted the cake delivery service and discovered the email ID from which the photo had been sent to the cake service. The email ID was traced back to Jagdish Patel and the police, on 6 December, 2012, filed a case against the boy under the IT Act for using the girl's photo without authorization.	Section 66A, IT Act (sending offensive messages in electronic form)
Jan, 2012	In Kashmir, a two-minute video showing police abuse was leaked and went viral. The video showed Kashmir police thrashing and stripping some youth. Instead of initiating an inquiry, the police registered a case under section 66A, in effect imcriminating the person who leaked the video, and whoever circulated it.	Section 66A, IT Act (sending offensive messages in electronic form)

Jan, 2012	A TV actor, Sanil Sodhi, was arrested for sending 25 naked pictures of himself to a married woman, who was also his friend.	Section 509, IPC (insulting the modesty of a woman) Section 67, IT Act (obscenity in electronic form)
Jan, 2013	In what was reminiscent of the case against Ambikesh Mahapatra, a student aligned with the Students' Federation of India, namely Ram Nayan Choudhury, faced a police complaint over a cartoon on Mamta Bannerjee. The complaint was filed by the students' wing of Trinamool Congress, the ruling party in West Bengal. Bannerjee is the chief Minister of West Bengal.	There was no FIR
Jan, 2013	A man named Ali was booked in Kochi for sedition and for insulting the national flag because he had 'liked' a Facebook page titled 'I Love Pakistan'. Ali, a resident of Kochi in the Indian state of Kerala, and employed in Dubai municipality had made a few Pakistani friends in Dubai. He had allegedly liked their page titled 'I love Pakistan' and, according to the Times of India, the FIR, which was filed in September 2012, alleged that Ali's profile showed the picture of a dog clothed in the [Indian] national flag. He denied the charges and said that his family faced social stigma and ostracism following the complaint. Ali, through his lawyer in Kerala, challenged the FIR in the Kerala High Court.	Section 124A, IPC (sedition), Section 66A, IT Act (sending offensive messages in electronic form) Section 2, Prevention of National Honor Act, 1971
Feb, 2013	Sanjay Chowdhary, a civil engineer and chairman of a public school, was arrested in Agra for 'communal and inflammatory' posts on Facebook which allegedly targeted top politicians of the country-Prime Minister Manmohan Singh, Union Minister Kapil Sibal and Samajwadi Party Chief Mulayam Singh Yadav	Section 153A IPC (promoting enmity between groups) Section 66A, IT Act (sending offensive messages in electronic form)
Mar, 2013	Tajinder Bagga, a right-wing vigilante known for having slapped several public figures, filed a complaint against Amaresh Misra, an extremely abusive pro-Congress leader, for having threatened Narendra Modi (leader of the right-wing BJP). His complaint was based on a series of screenshots of Misra's tweets condemning Modi to death.	There was no FIR



**New Delhi, April 2013**