

# LAWS AND ETHICS OF NEW MEDIA

## STRUCTURE

This chapter shall cover the following main points:

- IT Act 2000 and Article 66 A
- Supreme court Amendment
- Cyber Law and Crime
- Ethics of new media

## • LEARNING OBJECTIVES

Through this chapter students will come to know about:

- To learn about various acts including IT Act 2000 and Article 66 A
- Know about the Supreme Court Amendment
- To learn the Cyber Laws and fundamentals of Cyber Media
- To learn about media and ethics - describe the role of media in delivering news to the public, identify the important characteristics of reliable journalism and summarize the effects of bias in news presentations.

## • IT ACT 2000 AND ARTICLE 66 A

There are many such disturbing activities that occurred in past and demanded of some rules and regulations urgently, some set definite patterns that can be put forward while carrying out any business transaction over the net, ranging from a simple friendly e-mail to carrying out the whole set of your work, without which it may go wild and beyond control and it can be used as a tool for the very destruction of mankind.

It was at this point of time that the government of India felt the need to enact the relevant cyber laws, which can regulate the Internet in India. It denotes all aspects, issues and the legal consequences on the Internet, the World Wide Web and cyber space.

Indian Parliament passed the Information Technology Bill on 17th May 2000, which is known as the Information Technology Act, 2000. It talks about the Cyber laws and forms the legal framework for electronic records and other activities done by electronic means/ways. The bill was passed in the budget session of 2000 and signed by President K. R. Narayanan on 9 May 2000. The bill was finalised by a group of officials headed by then Minister of Information Technology Pramod Mahajan.

The original Act contained 94 sections, divided into 13 chapters and 4 schedules. The laws apply to the whole of India. If a crime involves a computer or network located in India, persons of other nationalities can also be indicted under the law.

The object of The Information Technology Act, 2000 as defined therein is as under :-

*"to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto."*

The Act provides a legal framework for electronic governance by giving recognition to electronic records and digital signatures. It also defines cyber crimes and prescribes penalties for them. The Act directed the formation of a Controller of Certifying Authorities to regulate the issuance of digital signatures. It also established a Cyber Appellate Tribunal to resolve disputes rising from this new law. The Act also amended various sections of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to make them compliant with new technologies.

A major amendment was made in 2008. It introduced Section 66A which penalized sending "offensive messages". It also introduced Section 69, which gave authorities the power of "interception or monitoring or decryption of any information through any computer resource". Additionally, it introduced provisions addressing - pornography, child porn, cyber terrorism and voyeurism. The amendment was passed on 22 December 2008 without any debate in Lok Sabha. The next day it was passed by the Rajya Sabha. It was signed into law by President Pratibha Patil, on 5 February 2009.

*“66A. Punishment for sending offensive messages through communication service, etc.—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.

Explanation.—For the purposes of this section, terms —electronic mail|| and —electronic mail message means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.”

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### • SUPREME COURT AMENDMENT

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On 24 March 2015, the Supreme Court of India, gave the verdict that Section 66A is unconstitutional in entirety. Section 66A has been struck down by Supreme Court’s Order dated 24th March, 2015 in the Shreya Singhal vs. Union of India, AIR 2015 SC. 1523. The court said that Section 66A of IT Act 2000 is "arbitrarily, excessively and disproportionately invades the right of free speech" provided under Article 19(1) of the Constitution of India. But the Court turned down a plea to strike down sections 69A and 79 of the Act, which deal with the procedure and safeguards for blocking certain websites. The controversial section has long been decried by activists, freedom of speech and internet freedom campaigners as being aimed solely at muzzling dissent and differences of opinion on the internet.

#### **The advent of the controversy**

The first petition came up in the court following the arrest of two girls in Maharashtra by Thane Police in November 2012 over a Facebook post. The girls had made comments on the shutdown of Mumbai for the funeral of Shiv Sena chief Bal Thackeray. The arrests triggered outrage from all quarters over the manner in which the cyber law was used. Most cases of

arrest were reported in 2012. Jadavpur University professor Ambikesh Mahapatra was arrested for forwarding caricatures on Trinamool Congress chief Mamata Banerjee on Facebook. Activist Aseem Trivedi was arrested for drawing cartoons lampooning parliament and the constitution to depict their ineffectiveness.

### **The grounds for the challenge**

While the objective behind the amendment was to prevent the misuse of information technology, particularly through social media, Section 66A came with extremely wide parameters, which allowed whimsical interpretation of the provision by law enforcement agencies. Most of the terms used in the section have not been specifically defined under the IT Act. The petitioners argued that it was a potential tool to curtail freedom of speech and expression guaranteed under the Constitution and going far beyond the ambit of “reasonable restrictions” on that freedom.

### **Validity struck down**

Given the above debate, the Supreme Court has struck a body blow for the basic right of free expression by striking down this provision in its entirety. The Hon’ble Supreme Court observed,

*“Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.”*

*The Hon’ble Supreme striking down the validity of Section 66A of the IT Act held, “We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth.”*

The law has been used in a number of instances to crack down on those who posted critical or divergent political views. Most recently, a 19-year-old Class 11 student in Uttar Pradesh had been arrested for his social media posts linking state minister Azam Khan with a communal incident.

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## **• CYBER LAW AND CRIME**

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As technology evolved, the need to regulate human behavior evolved too. Cyber laws came into existence in order to ensure that people use technology and avoid its misuse.

If an individual commits an act which violates the rights of a person in the cyberspace, then it is treated as a cyberspace violation and punishable under the provisions of the cyber laws.

Since the cyberspace is completely different from the physical world, traditional laws are not applicable here. In order to provide cyber security to users, the government introduced several cyber laws.

When the internet was designed and developed, the developers had no idea that it would have the potential of growing to such great an extent.

Today, many people are using the internet for illegal and immoral activities which need regulation. In the cyberspace things like money laundering, identity theft, terrorism, etc. have created a need for stringent laws to enhance cyber security.

Additionally, many technologically qualified criminals like hackers interfere with internet accounts through the Domain Name Server (DNS), IP address, phishing, etc. and gain unauthorized access to a user's computer system and steal data.

While there is no clear definition of cyber law, it is broadly the legal subject which emanated from the development of technology, innovation of computers, use of the internet, etc.

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## • CYBER LAW

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Since the beginning of civilization, man has always been motivated by the need to make progress and better the existing technologies. This has led to tremendous development and progress which has been a launching pad for further developments. Of all the significant advances made by mankind from the beginning till date, probably the most important of them is the development of Internet.

However, the rapid evolution of Internet has also raised numerous legal issues and questions. As the scenario continues to be still not clear, countries throughout the world are resorting to different approaches towards controlling, regulating and facilitating electronic communication and commerce.

The Parliament of India has passed its first Cyberlaw, the Information Technology Act, 2000 which provides the legal infrastructure for E-commerce in India. The said Act has received the assent of the President of India and has become the law of the land in India.

At this juncture, it is relevant for us to understand what the IT Act, 2000 offers and its various perspectives.

Cyber Law encapsulates legal issues which are related to the use of communicative, transactional, and distributive aspects of networked information technologies and devices.

It is not as distinct as the Property Law or other such laws since it covers many areas the law and regulation. It encompasses the legal, statutory, and constitutional provisions which affect computers and networks.

Further, it concerns itself with individuals, and institutions which:

- Play an important part in providing access to cyberspace
- Create hardware or software which allows people to access cyberspace
- Use their own computers and enter cyberspace

Cyber Law is a generic term referring to all the legal and regulatory aspects of the internet. Everything concerned with or related to or emanating from any legal aspects or concerning any activities of the citizens in the cyberspace comes within the ambit of cyber laws.

Currently, there are two main statutes which ensure cyber security:

- The Indian Penal Code. 1860
- The Information Technology Act, 2000

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## • ETHICS OF NEW MEDIA

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Media ethics is the best division of applied ethics dealing with the specific ethical principles and standards of media, including broadcast media, film, theatre, the arts, print media and the internet. The field covers many varied and highly controversial topics, ranging from war journalism to Benetton ad campaigns.

Media ethics promotes and defends values such as a universal respect for life and the rule of law and legality. Media Ethics defines and deals with ethical questions about how media should use texts and pictures provided by the citizens.

Literature regarding the ways in which specifically the Internet impacts media ethics in journalism online is scarce, thereby complicating the idea for a universal code of media ethics.

The ethics of journalism is one of the most well-defined branches of media ethics, primarily because it is frequently taught in schools of journalism. Journalistic ethics tend to dominate media ethics, sometimes almost to the exclusion of other areas. Topics covered by journalism ethics include:

- News manipulation. News can manipulate and be manipulated. Governments and corporations may attempt to manipulate news media; governments, for example, by censorship, and corporations by share ownership. The methods of manipulation are subtle and many. Manipulation may be voluntary or involuntary. Those being manipulated may not be aware of this. See: news propaganda.
- Truth. Truth may conflict with many other values.
  - Public interest. Revelation of military secrets and other sensitive government information may be contrary to the public interest, even if it is true. However, public interest is not a term which is easy to define.
  - Privacy. Salacious details of the lives of public figures is a central content element in many media. Publication is not necessarily justified simply because the information is true. Privacy is also a right, and one which conflicts with free speech. See: paparazzi.
  - Fantasy. Fantasy is an element of entertainment, which is a legitimate goal of media content. Journalism may mix fantasy and truth, with resulting ethical dilemmas. See: National Enquirer, Jayson Blair scandal, Adnan Hajj photographs controversy.
  - Taste. Photo journalists who cover war and disasters confront situations which may shock the sensitivities of their audiences. For example, human remains are rarely screened. The ethical issue is how far should one risk shocking an audience's sensitivities in order to correctly and fully report the truth. See photojournalism.
- Conflict with the law. Journalistic ethics may conflict with the law over issues such as the protection of confidential news sources. There is also the question of the extent to which it is ethically acceptable to break the law in order to obtain news. For example, undercover reporters may be engaging in deception, trespass and similar torts and crimes. See undercover journalism, investigative journalism.

The most important element behind a journalistic text, a breaking news story, a news report or an analysis is not simply the Truth, but the journalist's conscience itself, to speak the Truth, to tell the story exactly in the way the current affairs have happened.

At a time when the volume of the information seems insuperable and the New Media live their own "Golden Age" via the plethora of the tools

they offer to the administration and dispersal of the Information, journalists seem to constantly whirl on the tip of a spinning coin.

This coin sometimes raises either simple or complex dilemmas that govern their choices and decisions: to tell the story “roughly” as it is or to make it more – as said at the New Media’s slang – “saleable”, that is to sell, in order to gain clicks from potential readers, thus making possible compromises concerning the information’s credibility? To reveal their sources or not to reveal? Should he publish the identity of the 42-year-old woman who murdered her husband and child, presenting her as a new Medea, or should he protect her, by respecting the presumption of her innocence?

In this frenzy, which describes the constant flow of information that are propagated via different and various channels, one can imagine that the fore-mentioned coin is moving in a way that resembles to an ultra-fast vortex. In addition, if one takes into account all the pressure journalists accumulate every so often (i.e. “Publish the story now, even if it’s incomplete, otherwise we will lose the first in the Google Analytics and you... well... you will lose your job”), then things can get pretty bad, messy and difficult.

### **Dangerous beliefs and attitudes in times of ultra-high velocity**

Basic rules of Journalistic Ethics not only constitute a map describing the mosaic that is composed by the tiles of thousands of new media, but it’s, mainly, the compass which shows to a journalist the way of good professional practice. Moreover, this way is governed by the undeviating expression of the “Truth Obligation Principle”, which he must put in practice, in order to protect the Public Interest.

The oversimplified and often aphoristic ascertainment that “there are big gaps in the regulatory framework of Journalistic Ethics” manages to propagate in two different paths. Either to give an alibi for inaction or to manifest the relation of cause and causality that governs a journalistic product of extremely poor quality; and it is the specific ascertainment that has nothing to offer neither to the Media’s evolution nor to the journalist himself.

At the same time, when rules of good professional practice are sidelined in the framework of an equally dangerous belief that “all these are just theories. In practice, all these are dead letters”, then the game of fake news – as the renowned media theorist Jürgen Habermas had once described – becomes more acute. This, consequently, results in the production of cheap and qualitatively poor journalistic content that resembles a lot to the material diffused by the gutter press. However, the worst consequence of



fake news is the conservation of old or the incubation of new forms of corruption and entanglement of interests.

### **The example of the US Presidential Elections**

If one observed the recent example of the Presidential Election back in the United States, would realise the destitution surrounding the US Mass Media; this is perceived more easily, when one understands how disconnected the media are towards the American citizens, let alone the utmost failure of polls to reflect the true sentiment of the civil society.

Moreover, lies become the absolute ruler in major global events, including the US Presidential Campaign.

In November 16th 2016, almost a week after Donald Trump's victory versus Hillary Clinton, journalist Craig Silverman from Buzzfeed made an interesting revelation. He showed, through a graph and a special online application, that the 20 top fake news for the US elections had managed to surpass in terms of engagement (as shown on web analytics) the true stories published at the end of the 2016 US Campaign.

It was then Tom Law in his article "Ethics in the news after Trump's election" who correctly underlined the failure of the US Media and most of all the consequences of the journalistic "unfair play" for Democracy itself.

Law described it clearly: it is one thing to shape public opinion and quite another to manipulate it. An analysis or a personal article cannot overlie news stories and news reports in the name of – or for the sake of – the Media's preference for the one or the other candidate.

Hence, the keyword at that point is one: consciousness. It is the professional consciousness that can hamper the expansion of the "fake news" phenomenon and that comes in full compliance and synergy with the absolute and imperative need for topical and dynamically enhanced rules, not only of the Journalistic Ethics, but also for the good professional conduct and practice.

To conclude, this is the key for the creation of new standards, which would harmonically combine Journalism based on qualitative criteria with New Technologies and especially the New Media.

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### **• SUMMARY**

- Indian Parliament passed the Information Technology Bill on 17th May 2000, which is known as the Information Technology Act, 2000. It talks about the Cyber laws and forms the legal framework for electronic records and other activities done by electronic means/ways.

- The Act also amended various sections of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to make them compliant with new technologies.
- A major amendment was made in 2008. It introduced Section 66A which penalized sending "offensive messages". It was signed into law by President Pratibha Patil, on 5 February 2009.
- On 24 March 2015, the Supreme Court of India, gave the verdict that Section 66A is unconstitutional in entirety.
- Currently, there are two main statutes which ensure cyber security: The Indian Penal Code, 1860 and The Information Technology Act, 2000
- Media ethics promotes and defends values such as a universal respect for life and the rule of law and legality. Media Ethics defines and deals with ethical questions about how media should use texts and pictures provided by the citizens.

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## • QUESTIONS

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### Fill in the blanks

1. Indian Parliament passed the Information Technology Bill on ....  
**Ans.** 17th May 2000,
2. Name Indian bill which talks about the Cyber laws and forms the legal framework for electronic records and other activities.....  
**Ans.** The Information Technology Act, 2000.
3. When was the major amendment made in the IT Act 2000?  
**Ans.** 2008.
4. Which section of the IT Act 2000 talks about penalizing for sending "offensive messages"?  
**Ans.** Section 66A
5. When did the Supreme Court of India, gave the verdict that Section 66A is unconstitutional in entirety.  
**Ans.** On 24 March 2015
6. Name two main statutes which ensure cyber security in India?  
**Ans.** The Indian Penal Code, 1860 and The Information Technology Act, 2000

### Choose the correct option?

1. How many schedules are there in IT Act 2000?

- (a) 3                      (b) 4                      (c) 6                      (d) 2

**Ans.** The correct answer is b.

2. When IT Act 2000 came into effect?

- (a) October 17, 2000                      (b) October 17, 2001  
(c) November 11, 2000                      (d) November 11, 2001

**Ans.** The correct answer is a.

3. Which is the Act which provides legal framework for e-Governance in India

- (a) IT (amendment) Act 2008                      (b) Indian Penal Code  
(c) IT Act 2000                      (d) None of the above

**Ans.** The correct answer is c.

4. IT Act 2000 amended various sections of which of the following Acts?

- (a) Indian Penal Code 1860  
(b) Reserve Bank of India Act 1934  
(c) Indian Evidence Act 1872 & Bankers Book Evidence Act 1891  
(d) All of the above

**Ans.** The correct answer is d.

#### **Answer in brief**

1. What do you understand by Cyber Law and crime?
2. Explain in your words about ethics of new media.
3. Define IT Act 2000 in your words.
4. Describe about Article 66 A and the Supreme Court Amendment.

