

Technology Law Analysis

March 26, 2015

FREEDOM OF ONLINE SPEECH

SUPREME COURT UPHOLDS ONLINE RIGHT TO FREEDOM OF EXPRESSION AND CLARIFIES INSTANCES WHERE INTERMEDIARY IS OBLIGED TO TAKE DOWN / BLOCK ONLINE CONTENT

In a landmark judgement on March 23, 2015 on the Information Technology Act 2000 ("IT Act"), the Supreme Court reinforced the strength of the Indian democracy and the independence of the judiciary.

The IT Act is a legislation that was enacted to provide legal recognition to electronic commerce and amend certain other legislations which had an impact on electronic commerce and e-governance. However, certain provisions of the IT Act have been felt to be draconian in the manner that they impacted individual freedom, particularly the fundamental right to freedom of expression.

There have been various instances where provisions of the IT Act have been thought to be overbroad and capable of abuse. Over the years there has been severe criticism from the general public and advocacy groups.

In this progressive judgement, the Supreme Court has struck down as unconstitutional provisions which were in violation of fundamental rights and has held that "*the law should not be used in a manner that has chilling effects on the "freedom of speech and expression"*".

The broad contours of this judgement are as follows:

- *Section 66A* that made the sending or posting of communications that were allegedly unacceptable (such as messages which were 'grossly offensive') punishable has been struck down as unconstitutional
- *Section 69A* and the related rules that permits the government to block for access by the public any online information in the interest of sovereignty and integrity of India, defence of India, security of the state, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence. This provision has been upheld on the ground that the provision is constitutional and provides adequate safeguards.
- *Section 79 and the Intermediary Rules* that dealt with the obligation of intermediaries to remove / block access to any content that was deemed unlawful has been clarified to mean that intermediaries need to only take down content upon receipt of a court order or administrative order.

For a detailed analysis of this judgement, please [click here](#).

– [Smitha Krishna Prasad](#), [Huzefa Tavawalla](#), [Rakhi Jindal](#) & [Gowree Gokhale](#)

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