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Amnesty International India submission to the Law Commission of India

20 June 2014

Following the Law Commission of India's call for comments on its Consultation Paper on Media Law, Amnesty International India welcomes the opportunity to make the following submission. Rather than exhaustively reviewing all the issues identified in the Consultation Paper, this submission focuses on key issues concerning the right to free speech and expression.

Specifically, this submission analyses existing Indian laws relating to defamation, scandalising the court, and restrictions on online speech in light of India's obligations under international human rights law, and provides recommendations on how to bring these laws in line with international law and standards on freedom of expression.

Amnesty International India would welcome the chance to provide more detailed inputs to the Commission.

Summary of Recommendations

Criminal Defamation

- Amnesty International India recommends the repeal of Sections 499 and 500 of the Indian Penal Code, and the decriminalization of defamation.
- If defamation is retained as a criminal offence, the law should not use imprisonment as a punishment for those convicted of defamation, in line with international standards on freedom of expression.
- The Indian Penal Code should allow for the defence of truth in all circumstances without imposing any further requirement, and the defence of reasonable efforts to ascertain the truth in matters of statements relating to public interest.
- The onus of proof of all elements of the offence should be on the state.

Civil Defamation

- Amnesty International India recommends that the law on civil defamation be codified.
- The law should allow correction and apologies to be offered as remedies.
- Any damages awarded should be proportionate and designed only to restore the reputation harmed, not to punish defendants.

'Scandalising the court' as contempt of court

- Amnesty International India recommends the repeal of Section 2(c)(i) of the Contempt of Courts Act.
- If “scandalising” or lowering the authority of the court is to be retained as a criminal offence, Section 2(c)(ii) must be amended to narrow the application of the law. Specifically, the words “tend to”, which increases the uncertainty of the scope of the offence, must be removed.
- The defence of truth must be considered in all circumstances, without any further requirement.

Section 66A of the Information Technology Act

- Amnesty International India recommends the repeal or substantial revision of section 66A of the Information Technology Act.

A. Defamation

Criminal Defamation

Indian Law and Context

Article 19(1) of the Constitution of India guarantees to all citizens the right to freedom of speech and expression. This right is not absolute. Article 19(2) permits reasonable restrictions on the right to free speech on several grounds, including defamation. However these restrictions must fall within certain parameters. India's Supreme Court has ruled that such restrictions must be authorized by law and must not be excessive or disproportionate.¹

Defamation in India is both a civil tort – where monetary compensation can be claimed - and a criminal offence.

Section 499 of the Indian Penal Code, 1860, states:

“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 expected, to defame that person.”

The law exempts certain forms of expression from being prosecuted as defamation, including the imputation of truth in the public good; opinions express in good faith about the public conduct of public servants or the conduct of persons touching any public question; and imputations made in good faith to protect personal interests.²

¹ *Express Newspapers v. Union of India*, decided on 8 January, 1958; AIR 1958 SC 578. *Bennett Coleman & Co. v. Union of India*, decided on 30 October, 1972. AIR 1973 SC 106.

² Section 499, Indian Penal Code. “First Exception.—Imputation of truth which public good requires to be made or published.—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.

Second Exception.—Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever re-specting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.—Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or

The defence of truth is applicable only where a statement is also found to be made in the public good. While the burden of proof to establish defamation lies on the state, it is upon the defendant to establish that a statement is both true and made in the public good. The Supreme Court has ruled that the question of whether something is in the public good is a question of fact to be assessed according to circumstances, and journalists do not enjoy special privileges.³ If proven, criminal defamation is punishable with imprisonment for up to two years and/or a fine.⁴

Criminal defamation laws in India are open to misuse, and are in practice deployed to harass and intimidate journalists⁵, critics of large businesses⁶, and human rights defenders.⁷ Criminal trials tend to take years to be completed, and prolonged pre-trial detention of suspects is common. Compensation for wrongful arrests is rarely awarded.

The threat of being arrested, held in pre-trial detention, and subjected to tortuous criminal trials create a situation where “the process is the punishment”.⁸ As one of India’s largest newspapers put it, “Filing a criminal defamation charge costs nothing, and are often used as intimidatory tactics against the media.”⁹

agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.—Imputation made in good faith by person for protection of his or other’s interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”

³ *Sewakram Sobhani v. R.K. Karanjia*, decided on 1 May 1981; AIR 1981 SC 1514.

⁴ Section 500, Indian Penal Code.

⁵ *Firstpost*, “Jayalalithaa files complaints against The Hindu, Nakkeeran”, 24 January 2012. Available at <http://www.firstpost.com/politics/jayalalithaa-files-complaints-against-the-hindu-nakkeeran-191654.html>.

⁶ *Mint*, “RNRL, Anil Ambani serve defamation notice to authors of Gas Wars”, 22 April 2014. Available at <http://www.livemint.com/Politics/rAe4PgZko0fRfbdlyo4ooM/RNRL-Anil-Ambani-serve-defamation-notice-to-authors-of-Gas.html>.

⁷ Amnesty International, “India urged to release environmental activists”, 3 June 2011. Available at <http://www.amnesty.org/en/news-and-updates/india-urged-release-environmental-activists-2011-06-03>.

⁸ *Tehelka*, Interview with Senior Advocate Rajeev Dhavan, 25 February 2012. Available at http://archive.tehelka.com/story_main51.asp?filename=hub250212Rajeev.asp.

⁹ *The Times of India*, “Defamation should be a civil offence: Tiwari”, 7 August 2013. Available at <http://timesofindia.indiatimes.com/india/Defamation-should-be-a-civil-offence-Tewari/articleshow/21665827.cms>.

Courts in India have taken note of the “growing tendency in business circles to convert purely civil disputes into criminal cases”.¹⁰ Journalist groups have called for the repeal of criminal defamation laws, and politicians have sporadically agreed that reform is necessary^{11 12}, but the laws remain on the books.

International Standards

The International Covenant on Civil and Political Rights, to which India is a state party, requires states to guarantee to everyone the right to freedom of expression.¹³ States are permitted to impose restrictions – including those seeking to respect the rights and reputations of others.¹⁴ However, such restrictions are nevertheless an interference with freedom of expression and so must serve a legitimate aim, be proportionate to that aim and be the least restrictive available option. They should be drafted in a narrow manner, provide legal clarity, and be construed strictly to ensure that they do not directly violate or have a chilling effect on freedom of expression.

There is growing international consensus that the criminalization of defamation is an unnecessary restriction on freedom of expression, and imprisonment for defamation a disproportionate sanction.

The UN Human Rights Committee (HRC), the expert body which monitors state compliance with the ICCPR, has urged states to consider decriminalizing defamation because “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”¹⁵

¹⁰ *Indian Oil Corporation v. NEPC*, decided on 20 July 2006; (2006) 6 SCC 736.

¹¹ “I would be the first person to recommend that there should not be criminal penal provisions, with regard to defamation.” Manish Tiwari, Information and Broadcasting Minister, in *The Times of India*, “Defamation should be a civil offence: Tiwari”, 7 August 2013. Available at <http://timesofindia.indiatimes.com/india/Defamation-should-be-a-civil-offence-Tewari/articleshow/21665827.cms>.

¹² “We are considering a proposal to decriminalise defamation to the extent it applies to journalists.” Veerappa Moily, Law Minister, in *Hindustan Times*, “To protect scribes, Moily for amends to defamation law”, 14 January 2011. Available at <http://www.hindustantimes.com/india-news/newdelhi/to-protect-scribes-moily-for-amends-to-defamation-law/article1-650494.aspx>.

¹³ Article 19(2) of the ICCPR states: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

¹⁴ Article 19(3) of the ICCPR states: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

¹⁵ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

The Committee, in interpreting Article 19 of the ICCPR, states that “defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.”¹⁶

The Committee also warns against subjecting persons to prolonged criminal prosecution. In its jurisprudence, the Committee has found that keeping defamation cases open for long periods of time and not proceeding to trial expeditiously can have a chilling effect on freedom of expression.¹⁷

Restrictions on freedom of expression must not be overbroad, and must be the least intrusive instrument possible to achieve their protective function. The Committee has stated that the ICCPR places a high value on public debate in a democratic society concerning figures in the public and political domain.¹⁸ It has specifically recommended reform of criminal defamation laws in a number of countries, including recently the Philippines, Italy, Russia and Mexico.¹⁹

The UN Special Rapporteur on freedom of expression – an independent human rights expert - has also called on countries to abolish criminal defamation laws, on the grounds that civil defamation laws provide adequate protection. In 2013, the Special Rapporteur stated:

“I strongly believe that defamation should be decriminalized completely and transformed from a criminal to a civil action, considering that any criminal lawsuit, even one which does not foresee a prison sentence, may have an intimidating effect on journalists. Furthermore, criminalising defamation limits the liberty in which freedom of expression can be exercised. I would also like to draw attention to the fact that if an economic penalty is applied through criminal law, it will most likely also be followed by civil economic reparation to the victim, thus imposing a double economic sanction.”²⁰

The Special Rapporteur has also recognized the chilling effect that criminal defamation laws have on freedom of expression, observing: “frivolous litigation, if

¹⁶ *Id.*

¹⁷ Communication No. 909/2000, *Kankanamge v. Sri Lanka*, Views adopted on 27 July 2004. Available at <http://www.ccprcentre.org/wp-content/uploads/2013/02/909-2000-Kankanamge-v.-Sri-Lanka-2004.pdf>.

¹⁸ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

¹⁹ Communication No. 1815/2008, *Adonis v. The Philippines*, Views adopted on 26 October 2011. Available at http://ccprcentre.org/doc/OP1/Decisions/103/1815%202008%20Adonis%20v.%20the%20Philippine_en.pdf; Also see concluding observations on Italy (CCPR/C/ITA/CO/5); concluding observations on the Russian Federation (CCPR/C/RUS/CO/6); concluding observations on Mexico (CCPR/C/MEX/CO/5).

²⁰ Preliminary observations and recommendations by the United Nations Special Rapporteur on the promotion and protection of freedom of opinion and expression: Visit to Italy, 11-18 November 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14003&LangID=E>.

misused can become a form of “judicial harassment” against the press or anyone exercising freedom of expression. Even if the claim is dismissed, the economic impact of the expenses incurred for defence can seriously limit the exercise of freedom of expression and can have a paralysing effect on the journalist or the media concerned, as well as on others engaged in investigative journalism.”²¹

The UN Special Rapporteur, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media and the OAS (Organization of American States) Special Rapporteur on Freedom of Expression have also jointly called for the repeal of criminal defamation laws. In 2002, they said in a joint statement: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”²²

In another joint statement in 2010, they stated: “Laws making it a crime to defame, insult, slander or libel someone or something...represent another traditional threat to freedom of expression.”²³

The ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur for Freedom of Expression and the IACHR (Inter-American Court of Human Rights (IACHR))--OAS Special Rapporteur on Freedom of Expression echo this view. With particular reference to criticism of public officials, they state: “In democratic societies, the activities of public officials must be open to public scrutiny. Criminal defamation laws intimidate individuals from exposing wrongdoing by public officials and such laws are therefore incompatible with freedom of expression.”²⁴

Regional bodies including the Parliamentary Assembly of the OSCE²⁵ and the Council of Europe Commissioner for Human Rights²⁶ have also called for the decriminalization

²¹ *Id.*

²² Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002. Available at <http://www.osce.org/fom/39838?download=true>.

²³ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 4 February 2010. Available at <http://www.osce.org/fom/41439?download=true>.

²⁴ Joint Declaration by the ACHPR Special Rapporteur for Freedom of Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression, March 2005. Available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=394&IID=1>.

²⁵ Paris Declaration of the OSCE Parliamentary Assembly, 10 July 2001, Available at <http://www.oscepa.org/publications/declarations/2001-paris-declaration/214-2001-paris-declaration-eng/file>.

²⁶ Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in *Human rights and a changing media landscape*, Council of Europe: December 2011, p. 11. Available at <http://www.coe.int/t/commissioner/source/prems/MediaLandscape2011.pdf>.

of defamation. The European Court of Human Rights has ruled that criminal sanctions for defamation have a chilling effect on journalistic freedom of expression.²⁷

Recommendations

India's criminal defamation laws breach its obligations under international law. These sections are known to lead to violations of the right to freedom of expression, and their existence itself can have a chilling effect, inhibiting people from exercising their rights to free speech and expression for fear of criminal prosecution. Imprisonment for defamation can discourage legitimate criticism by the media of government and public figures, which is key to a democratic society. Given the existence of civil law remedies for defamation, criminalization is unnecessary for the protection of reputations.

Amnesty International India recommends the repeal of Sections 499 and 500 of the Indian Penal Code, and the decriminalization of defamation.

If defamation is retained as a criminal offence, the law should not use imprisonment as a punishment for those convicted of defamation, in line with international standards on freedom of expression. The Indian Penal Code should allow for the defence of truth in all circumstances without imposing any further requirement, and the defence of reasonable efforts to ascertain the truth in matters of statements relating to public interest. The onus of proof of all elements of the offence should be on the state.

Civil Defamation

Indian Law and Context

Civil law for defamation is not codified in India. The Supreme Court has ruled that public authorities (government bodies and institutions) cannot bring suits for defamation. It has also stated that public officials cannot recover damages for statements about acts related to their official duties.²⁸

Civil defamation lawsuits are routinely used by large businesses to harass and intimidate journalists, critics of large businesses, and human rights defenders. The increasing use of strategic civil defamation lawsuits – a practice referred to in the United States as SLAPPs, or strategic lawsuits against public participation – may directly violate or have a chilling effect on freedom of expression.

²⁷ *Cumpănă and Mazăre v. Romania*, Application No. 3334, 8/96 Judgment of 17 December 2004, para. 114. Available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67816>.

²⁸ *Rajagopal v. State of Tamil Nadu*, decided on 7 October 1994; AIR 1995 SC 264.

Defamation lawsuits claiming large sums of money as damages have been filed, or threatened to be filed, by heads of educational institutions against journalists²⁹, pesticide industries against environmental activists³⁰, and large media houses against student bloggers.³¹ While courts have rarely awarded substantial damages, the financial, time and psychological costs of fighting a defamation claim can force defendants to settle matters out of court, even if they have lawfully exercised their freedom of speech.³²

International Standards

Civil defamation laws, like criminal defamation laws, can also improperly restrict freedom of expression. The UN Human Rights Committee has stated in its authoritative interpretation of the right to freedom of expression under the ICCPR that defamation laws should “avoid excessively punitive measures and penalties”.³³

The UN special rapporteur on freedom of opinion and expression has clarified that “sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive, and impart information...damage awards should be strictly proportionate to the actual harm caused.”³⁴

The Special Rapporteur stated in 2004 with regard to civil defamation: “Any fines that are levied should not prevent the continuation of press activities and investigations and should be appropriate to the financial resources of journalists...defamation cases could equally be solved without recourse to the judiciary, but through the good offices of a mediator.”³⁵

²⁹ IBNLive, “IIPM sues Caravan, Google, Penguin for Rs 50 cr”, 23 June 2011. Available at <http://ibnlive.in.com/news/iipm-sues-caravan-google-penguin-for-rs-50-cr/162032-3.html>

³⁰ Sunita Narain, “Strategic SLAPPs”, *Business Standard*, 23 May 2006. Available at http://www.business-standard.com/article/opinion/sunita-narain-strategic-slapps-106052301148_1.html.

³¹ *The Hindu*, “Student blogger, scribe to fight Times Group defamation notice”, 26 May 2013. Available at <http://www.thehindu.com/news/national/student-blogger-scribe-to-fight-times-group-defamation-notice/article4750817.ece>.

³² Some lawsuits are filed before courts in remote areas, which increases costs for defendants. See *Outlook*, “Why does Delhi-based IIPM repeatedly sue in Assam?”, 22 June 2011. Available at <http://www.outlookindia.com/blogs/default.aspx?ddm=10&pid=2536&eid=31>.

³³ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

³⁴ Report of the Special Rapporteur on access to information, criminal libel and defamation, the police and the criminal justice system, and new technologies, 18 January 2000, UN Doc E/CN.4/2000/63. Available at access-dds-ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf.

³⁵ Report of the Special Rapporteur on Internet governance and human rights, freedom of expression and defamation, and security and protection of media professionals, 17 December 2004, UN Doc E/CN.4/2005/64. Available at access-dds-ny.un.org/doc/UNDOC/GEN/G05/106/90/PDF/G0510690.pdf.

The Special Rapporteur, in a joint statement with the OSCE Representative on Freedom of the Media and the Council of Europe Commissioner for Human Rights observed in 2000 that “civil sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of nonpecuniary remedies.”³⁶

In another joint statement in June 2014, the experts stated that “the law should allow for corrections and apologies as remedies. In case civil sanctions are necessary, they have to be proportionate. Excessive and disproportionate damages awarded in civil defamation cases can exert heavy pressure on the offender, whose economic survival can be threatened in some cases.”³⁷

Recommendations

Amnesty International India recommends that the law on civil defamation be codified. The law should allow correction and apologies to be offered as remedies. Any damages awarded should be proportionate and designed only to restore the reputation harmed, not to punish defendants.

B. “Scandalising the court” as contempt of court

Indian Law and Context

Article 19(2) of the Constitution of India states that contempt of court can be a ground for imposing of ‘reasonable restrictions’ on freedom of speech and expression. As stated earlier, India’s Supreme Court has ruled that such restrictions must be authorized by law and must not be excessive or disproportionate. Articles 120 and 215 of the Constitution give the Supreme Court and High Courts of India the power to punish for contempt of court.

³⁶ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 30 November 2000. Available at <http://www.osce.org/fom/40190?download=true>.

³⁷ Joint statement by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OSCE Representative on Freedom of the Media and Council of Europe Commissioner for Human Rights, 8 June 2014. Available at <http://www.coe.int/en/web/commissioner/-/defamation-in-italy-a-draft-law-to-be-changed>.

Contempt of court can be both a civil wrong and a criminal offence in India. Section 2 of the Contempt of Courts Act, 1971 defines criminal contempt as any act or publication which:

“i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

Contempt can be punished only where it substantially interferes, or tends substantially to interfere with the due course of justice.³⁸ Exceptions include publications on matters not pending before the court, fair and accurate reports of judicial proceedings and fair criticism of judicial acts.³⁹

If proven, contempt of court is punishable with imprisonment for up to six months, and/or a fine of up to two thousand rupees. An apology “made to the satisfaction of the court” can lead to discharge of the accused or remittance of the punishment.⁴⁰ Courts have generally followed the practice of accepting apologies, although fines or imprisonment have been imposed in some cases.

Indian courts have interpreted the offence of ‘scandalising’ a court broadly, and differently. Judgments by the Supreme Court and High Courts have said that contempt can be caused by:

- A statement that creates an impression “in the minds of the public that the Judges in the highest Court in the land act on extraneous considerations in deciding cases”⁴¹;
- A statement which tends to “deter actual and prospective litigants from placing complete reliance upon the court’s administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties”⁴²;

³⁸ Section 13 (a), Contempt of Courts Act, 1971.

³⁹ Sections 3(2), 4 and 5, Contempt of Courts Act, 1971.

⁴⁰ Section 12, Contempt of Courts Act, 1971.

⁴¹ *Aswini Kumar Ghose v. Arabinda Bose*, decided on 12 December 1952; AIR 1953 SC 75.

⁴² *Brahma Prakash Sharma v. State of Uttar Pradesh*, decided on 8 May 1953; AIR 1954 SC 10.

- “All acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority”⁴³;
- A statement “calculated to interfere with the due course of justice or proper administration of law”⁴⁴;
- “A scurrilous attack on a Judge, in respect of a judgment or past conduct”⁴⁵;
- A “gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process”⁴⁶;
- “Any caricature of a judge calculated to lower the dignity of the court”, “Imputing partiality, corruption, bias, improper motives to a judge”⁴⁷;
- “A scurrilous attack on the integrity, honesty and judicial competence and impartiality of judges”⁴⁸;

Articles and cartoons alleging corruption on the part of individual judges⁴⁹, a survey among advocates asking them to rate judges on various aspects⁵⁰, and even an affidavit to the court criticizing its working have been ruled to constitute contempt.⁵¹

Some elements of the offence are discussed in greater detail below.

Truth: Until recently, the factual basis of statements alleged to amount to contempt was not always an admissible defence in court.⁵² In 2002, a commission to review the working of the Constitution of India recommended that truth be included as a defence in contempt of court proceedings.⁵³ Four years later, the Contempt of Courts Act was

⁴³ *E M Sankaran Namboodiripad v. T Narayanan Nambiar*, decided on 31 July 1970; AIR 1970 SC 2015.

⁴⁴ *Perspective Publications v. State of Maharashtra*, decided on 19 November 1968; AIR 1971 SC 221.

⁴⁵ *C K Daphtary v. O P Sharma*, decided on 19 March 1971; AIR 1971 SC 1132.

⁴⁶ *In Re: S Mulgaokar*, decided on 21 February 1978; AIR 1978 SC 727.

⁴⁷ *D C Saxena v. Hon'ble Chief Justice of India*, decided on 19 July 1997; (1996) 5 SCC 216.

⁴⁸ *Surya Prakash Khatri v. Madhu Trehan*, decided on 28 May 2001; 2001 Cri L J 3476.

⁴⁹ *Court on its own motion v. M K Tayal*, decided on 11 September 2007; Contempt Case (Criminal) No. 7 of 2007.

⁵⁰ *Surya Prakash Khatri v. Madhu Trehan*, decided on 28 May 2001; 2001 Cri L J 3476.

⁵¹ *In Re: Arundhati Roy*, decided on 6 March 2002; AIR 2002 SC 1375.

⁵² *C K Daphtary v. O P Sharma*, decided on 19 March 1971; AIR 1971 SC 1132. However in a previous case, the Court had suggested that truth could be a defence. *Bathina Ramakrishna Reddy v. State of Madras*, decided on 14 February 1952; AIR 1952 SC 149.

⁵³ The National Commission to Review the Working of the Constitution said: “A total embargo on truth as justification may be termed as unreasonable restriction. It would, indeed, be ironical if, in spite of the emblems hanging prominently in the court halls, manifesting the motto of “Satyameva Jayate”, in the High Courts and “Yatho dharma statho jaya”, in the Supreme Court, the courts could rule out the defence of justification by truth.” The Commission also suggested an amendment to the Constitution of India to recognize truth as a defence in contempt cases, but this recommendation was not implemented. See Report National

amended to include truth as a defence if a court “is satisfied that it is in public interest and the request for invoking the said defence is bona fide.”⁵⁴ The Statement of Objects and Reasons to the Bill stated that the amendment would introduce fairness in procedure and meet due process requirements. However at least one subsequent judgement has not considered truth as a defence.⁵⁵

Consequences of actions: In deciding whether a statement amounts to contempt, there is no requirement in Indian law to prove that the statement has led to actual interference with the administration of justice or undermining of public confidence.

The Contempt of Courts Act also criminalizes statements which only “tend to” scandalise or lower the authority of any court. Courts have held that “it is enough if [a statement] is likely, or tends in any way to interfere with the proper administration of law.”⁵⁶ In the *Arundhati Roy* case, the Delhi High Court stated, “[There] is no defence to say that as no actual damage has been done to the judiciary, the proceedings be dropped. The well-known proposition of law is that it punishes the archer as soon as the arrow is shot no matter if it misses to hit the target.”⁵⁷

Intention: It is unclear whether a person publishing a statement must intend for it to (or know that it is likely to) scandalise the court, or lower its authority, or interfere with the course of justice, for the statement to amount to contempt. In a case involving a state Chief Minister, the Supreme Court stated that whether the defendant intended the lowering of prestige of judges and courts in the eyes of the people “may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification.”⁵⁸ However, in another case involving a Law Minister (and former High Court judge) criticizing the judiciary in a public speech, the Supreme Court ruled that he was not guilty of contempt, stating that “he intended no disrespect to this Court or its functioning.”⁵⁹ In another case, where a former Chief Justice of India alleged corruption in the appointment of judges in an interview on the eve of his retirement, the Bombay High Court said that the “interview appear[ed] to have been given with an idea to improve the judiciary”, and ruled that it did not constitute contempt.⁶⁰

Identity of person: The identity of defendants, particularly their knowledge of legal matters, has been suggested by courts to be a relevant factor in deciding whether

Commission to Review the Working of the Constitution, Volume 1, Chapter 7. Available at <http://lawmin.nic.in/ncrwc/finalreport/v1ch7.htm>.

⁵⁴ Section 13 (b), Contempt of Courts Act, 1971.

⁵⁵ *Surya Prakash Khatri v. Madhu Trehan*, decided on 28 May 2001; 2001 Cri L J 3476.

⁵⁶ *Brahma Prakash Sharma v. State of Uttar Pradesh*, decided on 8 May 1953; AIR 1954 SC 10.

⁵⁷ *In Re: Arundhati Roy*, decided on 6 March 2002; AIR 2002 SC 1375.

⁵⁸ *E M Sankaran Namboodiripad v. T Narayanan Nambiar*, decided on 31 July 1970; AIR 1970 SC 2015.

⁵⁹ *P N Duda v. P Shiv Shankar*, decided on 15 April 1988; AIR 1988 SC 1208.

⁶⁰ *Vishwanath v. E.S. Venkatramaih And Others*, decided on 2 March 1990; (1990) 92 Bom L R 270.

their actions amount to contempt. In the *Arundhati Roy* case, the Delhi High Court contrasted a prominent writer's criticism of the Supreme Court with that made by a Law Minister in the *P N Duda* case. The Court said: "In the instant case the respondent has not claimed to be possessing any special knowledge of law and the working of the institution of Judiciary. She has only claimed to be a writer of repute...She has not claimed to have made any study regarding the working of this Court or Judiciary in the country and claims to have made the offending imputations in her proclaimed right of freedom of speech and expression as a writer. The benefit to which P N Duda under the circumstances, was held entitled is, therefore, not available to the respondent in the present proceedings."⁶¹

International standards

The International Covenant on Civil and Political Rights, to which India is a state party, allows states to impose restrictions on the right to freedom of expression on the ground of 'public order'.⁶² The UN Human Rights Committee (HRC), which monitors state compliance with the ICCPR, has said that contempt of court proceedings relating to forms of expression may be tested against this ground.

The Committee has stated that "[contempt of court] proceedings and the penalty imposed must be shown to be warranted in the exercise of a court's power to maintain orderly proceedings. Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights."⁶³

The Committee has noted that the ICCPR protects criticism of all public figures, and "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration".⁶⁴

⁶¹ *In Re: Arundhati Roy*, decided on 6 March 2002; AIR 2002 SC 1375.

⁶² Article 19(2) of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

⁶³ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

⁶⁴ *Id.*

The guidelines to implement the Bangalore Principles of Judicial Conduct – a set of standards formulated by national and international judges, which supplement the UN Basic Principles on the Independence of the Judiciary – state that “since judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts”.⁶⁵

The Commonwealth (Latimer House) Principles on the Three Branches of Government also state that “criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions”.⁶⁶

Comparative law

Some other common law jurisdictions have abolished the offence of scandalising the court, or similar offences, altogether.

The United Kingdom abolished the offence of scandalising the court through the Crime and Courts Act 2013, following a UK Law Commission recommendation. The Law Commission noted that the offence was in principle an infringement of freedom of expression. It stated that the offence may be regarded as self-serving: “There is something inherently suspect about an offence both created and enforced by judges which targets offensive remarks about judges.”⁶⁷

The Commission also noted that measures to suppress criticism of the judiciary could have several adverse effects:

“(1) The measures may have a chilling effect, which also deters people from making complaints which are possibly justified.

(2) The suppression of unjustified criticism tends to fuel a suspicion that perhaps the criticism is not unjustified after all and that those in authority must have something to hide.

⁶⁵ Judicial Integrity Group, Measures for the effective implementation of the Bangalore Principles of Judicial Conduct. Available at

http://www.judicialintegritygroup.org/resources/documents/BP_Implementation%20Measures_Engl.pdf.

⁶⁶ Principle VII (C) of the Commonwealth (Latimer House) Principles on the Three Branches of Government. Available at <http://www.cmja.org/downloads/latimerhouse/commprinthreearms.pdf>.

⁶⁷ The Law Commission, *Contempt of Court: Scandalising the Court*, 19 December 2012, para 63. Available at http://lawcommission.justice.gov.uk/docs/lc335_scandalising_the_court.pdf.

(3) A society in which the expression of opinion is inhibited by fear is unpleasant to live in and will experience an accumulation of resentment, leading to instability in the long term.”⁶⁸

The Commission noted with approval the words of a former judge: “If confidence in the judiciary is so low that statements by critics would resonate with the public, such confidence is not going to be restored by a criminal prosecution in which judges find the comments to be scandalous or in which the defendant apologises.”⁶⁹

Convictions for similar offences have been held to be unconstitutional in the United States. In the case of *Bridges vs California*, the US Supreme Court ruled that “disrespect for the judiciary” could not justify convictions for contempt of court. It said that “an enforced silence, however, limited, solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion and contempt much more than it would enhance respect...judges as persons, or courts, as institutions, are entitled to no greater immunity from criticism that other persons or institutions.”⁷⁰

In Canada, the offence of scandalising the court was found to be unconstitutional and violative of the right to freedom of expression under the Canadian Charter of Rights and Freedoms in the case of *R v. Kopyto*.⁷¹ The court noted: “The more complex society becomes the greater is the resultant frustration imposed on citizens by that complexity and the more important becomes the function of the courts. As a result of their importance the courts are bound to be the subject of comment and criticism. Not all will be sweetly reasoned...But the courts are not fragile flowers that will wither in the hot heat of controversy...They need not fear criticism nor need they seek to sustain unnecessary barriers to complaints about their operations or decisions.”⁷²

Recommendations

The use of the Contempt of Courts Act to punish acts deemed to amount to ‘scandalising the court’ is inconsistent with the right to freedom of expression. Restrictions on acts that are alleged to amount to ‘scandalising’ or lowering the authority of a court, judge or the judicial process are not necessary for legitimate public interests. Where the comments directly and personally affect the reputation of

⁶⁸ *Id.* at para 31.

⁶⁹ *Id.* at para 66.

⁷⁰ *Bridges vs California*, (1941) 314 US 252, 287. Available at <http://supreme.justia.com/cases/federal/us/314/252/case.html> See also *Garrison v. Louisiana*, (1964) 379 US 64. Available at <http://supreme.justia.com/cases/federal/us/379/64/case.html>.

⁷¹ *R vs Kopyto* (1988) 47 DLR (4th) 213 (Ont CA). Available at <http://caselaw.canada.globe24h.com/0/0/ontario/court-of-appeal-for-ontario/1987/11/27/r-v-kopyto-1987-176-on-ca.shtml>.

⁷² *Id.*

specific individual officials, they can take recourse to civil remedies like any other person.

Amnesty International India recommends the repeal of Section 2(c)(i) of the Contempt of Courts Act.

If “scandalising” or lowering the authority of the court is to be retained as a criminal offence, Section 2(c)(ii) must be amended to narrow the application of the law. Specifically, the words “tend to”, which increases the uncertainty of the scope of the offence, must be removed. The defence of truth must be considered in all circumstances, without any further requirement.

C. Section 66A

Indian Law and Context

Article 19(2) of the Constitution of India states that public order, decency, morality, and incitement to an offence can be grounds for imposing ‘reasonable restrictions’ on freedom of speech and expression. As stated earlier, India’s Supreme Court has ruled that such restrictions must be authorized by law and must not be excessive or disproportionate. The Court has also ruled that restrictions relying on the ground of ‘public order’ are valid only when there is a “proximate and reasonable nexus between the speech and the public order”⁷³.

Section 66A of the Information Technology Act, 2000 (the section was introduced through an amendment in 2008) states:

“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

⁷³ *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, decided on 21 January 1960; AIR 1960 SC 633.

about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.”

No upper limit to the fine is specified. Some of the offences which would fall under this provision, - for instance, criminal intimidation – are already criminalized under the Indian Penal Code, where they attract lesser punishments.⁷⁴

Section 66A is ‘cognizable’ under Indian law, which means that police officials can arrest suspects without warrants. It has become apparent through a series of arrests under section 66A that the law can be used to violate legitimate exercise of the right to freedom of speech, and lead to arbitrary arrests. Authorities have used section 66A and other laws to arrest people for:

- A satirical illustration about the West Bengal Chief Minister and her decision to seek to remove a party colleague from a ministerial position;⁷⁵
- Cartoons caricaturing Parliament, the Constitution and other national symbols to depict their ineffectiveness;⁷⁶
- A tweet alleging that the son of the Finance Minister was corrupt⁷⁷
- A Facebook post – and a ‘like’ - questioning a *bandh* (strike) in Mumbai to mourn a political leader’s death;⁷⁸
- Online comments alleging land-grabbing and illegal detention by the brother of the Agriculture Minister;⁷⁹

In response to public outcry over some of these arrests, the central government in January 2013 issued a notice to state governments which stipulated that any arrest in relation to a complaint under section 66A would require the prior approval of a senior

⁷⁴ Section 503 of the Indian Penal Code defines ‘criminal intimidation’. Section 506 states that the offence can be punished with imprisonment for up to two years and/or a fine.

⁷⁵ *Hindustan Times*, “Professor arrested for poking fun at Mamata”, 13 April 2012. Available at <http://www.hindustantimes.com/india-news/professor-arrested-for-poking-fun-at-mamata/article1-839847.aspx>.

⁷⁶ *The Hindu*, “Mumbai police arrest cartoonist, slap sedition, cybercrime charges on him”, 10 September 2012. Available at <http://www.thehindu.com/news/national/mumbai-police-arrest-cartoonist-slap-sedition-cybercrime-charges-on-him/article3877809.ece>.

⁷⁷ *NDTV*, “Man arrested for tweet on Chidambaram’s son”, 31 October 2012. Available at <http://www.ndtv.com/article/south/man-arrested-for-tweet-on-chidambaram-s-son-286405>.

⁷⁸ *Zee News*, “Two girls held for FB post questioning bandh for Thackeray’s funeral”, 19 November 2012. Available at http://zeenews.india.com/news/maharashtra/two-girls-held-for-fb-post-questioning-bandh-for-thackeray-s-funeral_811632.html.

⁷⁹ *The Economic Times*, “PIL in Bombay HC questioning validity of Section 66A of IT Act”, 5 February 2013. Available at http://articles.economicstimes.indiatimes.com/2013-02-05/news/36764806_1_pune-police-aseem-trivedi-petition.

police officer.⁸⁰ It is unclear if these directions were followed in subsequent arrests under section 66A. In May 2013, the Supreme Court noted that the advisory should not be flouted, and directed states to comply with it.⁸¹

Section 66A continues to be used to prosecute people for online expression, particularly for expression relating to public figures. In May 2014, a man was arrested for sending a text message depicting the Prime Minister on a funeral pyre.⁸² The same month, a First Information Report (FIR) was filed against a man who had said in a Facebook post that if the-then Prime-Minister-designate Narendra Modi came to power, it would lead to a holocaust.⁸³

A number of individuals, including a Member of Parliament, have filed public interest litigation challenging the constitutionality of section 66A. They have argued that the section violates constitutional guarantees of equality and freedom of speech as it is “ambiguous in its phraseology and imposes statutory limits on the exercise of internet freedom.”⁸⁴ One petitioner has argued that the broad and vague nature of the section creates a chilling effect where “citizens are severely dis-incentivized from exercising their constitutionally protected right to free speech for fear of frivolous prosecution.”⁸⁵ Another member of Parliament introduced a private bill in Parliament seeking the repeal of the law.⁸⁶

International standards

The UN Human Rights Committee has stated that Article 19 of the ICCPR, which protects freedom of expression, applies also to all forms of “electronic and internet-

⁸⁰ Department of Electronics and Information Technology, Government of India, “Advisory on implementation of section 66A of the Information Technology Act, 2000”, *Advisory notice No. 11(6)/2012-CLFE*, 9 January 2013. Available at http://meghpil.nic.in/notification/Advisoryonsection_66A.pdf.

⁸¹ *Ibnlive.com*, “Prior approval must to arrest under Section 66A: Supreme Court,” 17 May 2013. Available at <http://ibnlive.in.com/news/prior-approval-must-to-arrest-under-section-66a-supreme-court/392152-3.html>.

⁸² *Bangalore Mirror*, “Youth from Bhatkal arrested for sending Whatsapp message on Modi”, 26 May 2014. Available at <http://www.bangaloremirror.com/bangalore/crime/Youth-from-Bhatkal-arrested-for-sending-WhatsApp-message-on-Modi/articleshow/35610511.cms>.

⁸³ *NDTV*, “Mumbai executive faces arrest for anti-Modi remarks on Facebook”, 23 May 2014. Available at <http://www.ndtv.com/elections/article/election-2014/mumbai-executive-faces-arrest-for-anti-modi-remarks-on-facebook-529560>.

⁸⁴ *Rajeev Chandrashekhar v. Union of India* [W.P.(C) No. 23 of 2013]. Available at <http://sflc.in/rajeev-chandrashekhar-v-union-of-india-w-p-c-no-23-of-2013/>.

⁸⁵ *Shreya Singhal v. Union of India* [W.P.(Crl).No. 167 of 2012]. Available at <http://sflc.in/shreya-singhal-v-union-of-india-w-p-crl-no-167-of-2012/>. See a list of other petitions at <http://sflc.in/information-technology-act-and-rules-time-to-change/>.

⁸⁶ Text of bill available at <http://jaypanda.in/wp-content/uploads/2013/12/Amendment-of-IT66A-Bill-v2.pdf>. See also Jay Panda, “A private member’s bill to amend 66a”, *Outlook*, 29 November 2012. Available at <http://www.outlookindia.com/article/-A-Private-Members-Bill-To-Amend-66A/283169>. The bill lapsed with the dissolution of the lower house of Parliament in April 2014.

based modes of expression”.⁸⁷ Restrictions on online speech therefore need to meet the same standards that apply to restrictions on offline speech. They must be provided by law, proven by the State as necessary and legitimate, and shown to be the least restrictive proportionate means to achieve the purported aim.

The Committee has stated that the freedom of speech and expression applies to ideas of all kinds, including which may be regarded as deeply offensive. It has also stressed that “the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”⁸⁸

In June 2012, India endorsed a landmark UN Human Rights Council resolution which affirmed “that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice.”⁸⁹

The UN Special Rapporteur on Freedom of Expression has emphasized that the types of information or expression that may be restricted under international human rights law in relation to off-line content also apply to online content. He stated in 2012, “Whether through oral or written words, art or any other form of expression, the same basic international norms and standards on the right to freedom of expression apply. We do not need new standards on human rights for the Internet.”⁹⁰

Protecting the rights of others from advocacy of hatred that constitutes incitement to hostility, discrimination or violence does justify some restrictions on the right to freedom of expression.⁹¹ However the Human Rights Committee has noted where a State seeks to justify restrictions on these grounds, it must demonstrate “a direct and immediate connection between the expression and the threat [to others’ rights].”⁹²

⁸⁷ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

⁸⁸ *Id.*

⁸⁹ UN Human Rights Council resolution on the promotion protection, and enjoyment of human rights on the Internet, 29 June 2012, UN Doc. A/HRC/20/L.13. Available at ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_20_L13.doc.

⁹⁰ Office of the High Commissioner for Human Rights, “The world is moving online: promoting freedom of expression”, 9 March 2012. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/Theworldismovingonlinepromotingfreedomofexpression.aspx>.

⁹¹ Article 20(2) of the ICCPR states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

⁹² Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

Advocacy of hatred is also more than just the expression of ideas or opinions that are hateful. It requires a clear showing of intent to urge others to discriminate, be hostile toward, or commit violence against the group in question. The Special Rapporteur on freedom of expression has noted that advocacy of hatred becomes an offence “only when the speaker seeks to provoke reactions (perlocutionary acts) on the part of the audience, and there is a very close link between the expression and the resulting risk of discrimination, hostility or violence.”⁹³

The Special Rapporteur noted that “it should be possible to scrutinize, openly debate and criticize, even harshly and unreasonably, ideas, opinions, belief systems and institutions, including religious ones, as long as this does not advocate hatred that incites hostility, discrimination or violence against an individual or a group of individuals.”

It must be noted that Section 66A conflates other forms of protected expression with advocacy of hatred. The issues contemplated by Section 66A (e.g. on information that causes annoyance, inconvenience) fall far short of international standards on what constitutes advocacy of hatred.

Arrest or detention under a law which is vague or over-broad, or incompatible with the right to freedom of expression, would be arbitrary under international standards.

Recommendations

Amnesty International India recommends the repeal or substantial revision of section 66A of the Information Technology Act.

Section 66A is imprecise and over-broad. Some restrictions dealing with criminal intimidation may reflect recognizably criminal offences whose punishment is consistent with international human rights law. However other restrictions – including on sending information that is grossly offensive or causes annoyance, inconvenience, obstruction, insult, injury, enmity, hatred, ill-will, etc. – are inconsistent with international human rights law and standards on freedom of expression. The law is likely to have a chilling effect –leading to people being unable to discern the boundary between legal and illegal expression and exercising self-censorship for fear they may be punished. It also increases the likelihood of arbitrary arrests and detention of those suspected of these offences.

⁹³ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 10 August 2011, UN Doc. A/66/290. Available at <http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf>.

The Internet should be a force for political freedom, not repression. Any restrictions on online expression must be formulated precisely, and be necessary and proportionate to specified goals. Amnesty International India also recommends a review of existing restrictions on speech and expression in the Indian Penal Code to ensure they are in line with international standards.