BEFORE THE HONOURABLE SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

In the matter of,

Section 66A of the Information Technology Act, 2000,

Sections 154, 157 & 482 of the Code of Criminal Procedure, 1973 &

Articles 14, 19, 21 and Articles 133, 134A of the Constitution of India

Civil Appeal No. ____/ 2013

APPELLANT		**RESPONDENT**
Sumali	**VERSUS**	**State of Neethisthan**

BEFORE SUBMISSION TO

THE HONOURABLE CHIEF JUSTICE AND HIS COMPANION JUSTICES

OF

THE HONOURABLE SUPREME COURT OF INDIA

MEMORANDUM ON BEHALF OF THE RESPONDENT

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LIST OF ABBREVIATIONS

ABBREVIATION	FULL FORM
AC	Appeal Cases
AIR	All India Reporter
All.	Allahabad
All ER	All England Law Reports (United Kingdom)
Cr.L.J	Criminal Law Journal
FIR	First Information Report
Gau.	Guwahati
HL	House of Lords
I.T.O	Income Tax Officer
Ker.	Kerala
Ori.	Orissa
Para.	Paragraph
SCALE	Supreme Court Almanac
SC	Supreme Court
SCC	Supreme Court Cases
SCJ	Supreme Court Journal
SCR	Supreme Court Reporter
SCW	Supreme Court Weekly
Supdt.	Superintendent

STATEMENT OF JURISDICTION

The Honourable Supreme Court is vested with jurisdiction, to hear the present matter under Article 133 and Article 134 A of the Constitution of India.

Article 133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3)……"

Article 134 A: Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub clause (c) of clause (1) of Article 134, may be given in respect of that case

QUESTIONS PRESENTED

ISSUE 1:

Whether A Criminal Matter Can Be The Subject Of An Appeal Under Article 133 Of The Constitution?

ISSUE 2:

Whether There Was Abuse of Process in the Matter of Filing F.I.R Against Sumali?

ISSUE 3:

Whether Section 66 A Of The Information Technology Act 2000 Act Violates Article 14, Article 19(1)(A) And Article 21 Of The Constitution?

STATEMENT OF FACTS

1. Neethisthan is a State in the Indian Union.
2. Acharya Sukh Dev was a spiritual figure, mystic, choreographer, philanthropist and educator.
3. During late 1990s there was a movement led by an atheist group, known as Indian Rationalists, against the activities of Acharya Sukh Dev. Accusations leveled against Acharya include everything from sexual abuse, money laundering, fraud in the performance of service projects, to murder.
4. The Acharya and his followers consistently denied the charges of misconduct, which were never proved. Devotees generally responded to allegations, such as those of sexual misconduct, with outright denial, asserting that former followers were vindictive and not reputable.
5. However Indian Rationalists started to propagate the allegations against Acharya through public meetings. The movement led to frequent clashes between the followers of Acharya and Indian Rationalists. In the year 2011 itself there were 1118 reported incidents of such clashes.
6. On 10-10-2012 Acharya died in a car accident
7. On 11-10-2012 the followers of Acharya had called for a bandh in the capital city to mourn the death of Acharya Sukh Dev.
8. On 11-10-2012 one Sumali, who is a fourth year LL.B. student entered the following comments in her page in the Face Book. "People like Acharya Sukh Dev are born and die daily and one should not observe a bandh for that," "Respect is earned, not given and definitely not forced. Today Dharmapur shuts down due to fear and not due to respect.
9. On 12-10- 2012 around 6 p.m police arrested Sumali on the basis of a complaint filed by one Jan Dev stating that the Face Book comment of Sumali is a criminal offence under Section 505 of Indian Penal Code read with Section 66 A of Information Technology Act 2000.On 13-10-2012 around 4.30 p.m. she was produced before the Magistrate .In the First Information Report it is stated that her action is a criminal offence under Section 505 of the Indian Penal Code read with Section 66 A of Information Technology Act 2000. Magistrate granted bail to her.

10. On 1-11-2012 Sumali filed a petition before the High Court of Neethisthan under Section 482 of the Code Criminal Procedure 1973 for quashing the F.I.R. On 2-11-2012 Sumali filed another petition under Art 226 of the Constitution challenging the validity of Section 66 A of the Information Technology Act 2000 on the ground of violation of Art 14, Art 19(1) (a) and Art 21 of the Constitution. The Division Bench of the High Court heard both the petitions together and dismissed the two Petitions filed by Sumali, through the Order dated 30-11-2012.
11. However on the basis of the application filed by Sumali under Art 134A of the Constitution the leave to file appeal under 133 of the Constitution was granted by the High Court. On 10-12-2012 Sumali filed an appeal under Art 133 of the Constitution Challenging the decision of the Neethisthan High Court dated 30-11-2012.
12. The following contentions are raised by Sumali.
    A. Abuse of Process is involved in the matter of the arrest of Sumali and filing of FIR
    B. Section 66 A of the Information Technology Act 2000 Act violates Art 14, Art 19(1) (a) and Art 21 of the Constitution.
13. On behalf of the State of Neethisthan all the contentions are refuted and submitted that findings of High Court regarding the quashing of FIR could not be the subject matter of the appeal under Art 133

SUMMARY OF PLEADINGS

Issue 1: Whether A Criminal Matter Can Be The Subject Of An Appeal Under Article 133 Of The Constitution?

It is humbly contended before this Honourable Court that the dismissal of the petitions filed by Sumali by the High Court is not a final order within the meaning of Article 133 of the Constitution as the criminal proceedings initiated against Sumali still persist for the offences committed by her under Section 505 of IPC read with Section 66A of Information Technology. Furthermore, quashing of FIR is a criminal proceeding and hence cannot be brought to the Supreme Court under the civil appellate jurisdiction within the ambit of Article 133 of the Constitution.

Issue 2: Whether There Was Abuse of Process in the Matter of Filing F.I.R Against Sumali?

It is submitted before this Honourable Court that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The F.I.R. disclosed commission of a cognizable offence as Sumali had committed the offences under Section 505 of IPC read with Section 66A of Information Technology. The police officer had reason to suspect the commission of a cognizable offence based on the facts mentioned in the First Information Report. The Police had the power to investigate and thereby, arrest the Appellant under Section 157(1) of the Cr.P.C. and this right cannot be intefered with by the Courts. There is no abuse of Process in the matter of arrest of Sumali by the Police under Section 41 of the Cr.P.C as they exercised their statutory powers in the matter of arrest of Sumali. The courts cannot quash an F.I.R. if it discloses the commission of an offence.

ISSUE 3: Whether Section 66 A Of The Information Technology Act 2000 Act Violates Article 14, Article 19(1)(A) And Article 21 Of The Constitution?

It is humbly submitted before this Honourable Court that Article 66 A of the I.T. Act does not violate Article 14 of the Constitution of India.

The original Section 66 of the IT Act 2000 was only limited to the hacking of the websites which proved to be ineffective. Therefore, 66 A was introduced. An Act cannot be declared invalid solely on the ground that it contains vague or uncertain provisions. The expressions such as "grossly offensive", "menacing", "annoyance", "inconvenience", "danger", "obstructions", "insult", "injury", "criminal intimidation", "enmity", "hatred" and "ill-will" also appear in other legislations. Therefore, the Article is not arbitrary or vague. A statute carries with it a presumption of constitutionality. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily. The bare possibility that the discretionary power may be abused is no ground for invalidating a statute. If the power is actually abused in any case the exercise of the power is actually abused in any case, the exercise of the power may be challenged as discriminatory or mala fide, but the statute will not fail on that ground. Hence, it is humbly submitted that Article 66 A is not violative of Article 14.

It is humbly submitted before this Honourable Court that Article 66 A of the I.T. Act does not violate Article 19(1)(a) of the Constitution of India.

Article 19(1) (a) guarantees freedom of speech and expression, subject to reasonable restrictions. Individual rights cannot be absolute in a welfare state. It has to be subservient to the Rights of the public at large. If the legislation *indirectly* or *incidentally* affects a citizen's right under Art. 19(1) it will not introduce any infirmity to the validity of the legislation. A piece of legislation which may impose unreasonable restrictions in one set of circumstances may be eminently reasonable in a different set of circumstances. In such cases, public *interests* should be kept in mind. No restriction can be said to be unreasonable merely because in a given case it operates harshly. Article 66 A has a direct and proximate nexus to its object i.e. maintenance of public order and tranquillity as it is a regulatory measure which provides against apprehended injury arising from various factors. Also, the mere possibility of abuse of power cannot invalidate a Statute. Hence, it is submitted that Article 66 A does not violate Article 19(1) (a).

It is humbly submitted before this Honourable Court that Article 66 A of the I.T. Act does not violate Article 21 of the Constitution of India.

The right of life and liberty so guaranteed under Article 21 is subject to the rule of proportionality. Liberty is itself the gift of law and may by law be forfeited or abridged. Where individual liberty comes into conflict with an interest of the security of the state or public order, the liberty of the individual must give way to the larger interest of the nation. Therefore, Article 66 A is not violative of Article 21.

BODY OF PLEADINGS

ISSUE 1:

MAINTAINABILITY OF APPEAL UNDER ARTICLE 133 OF THE CONSTITUTION.

SUBMISSION (A):

The Order Passed by the High Court not Quashing the F.I.R is Not a Final Order.

The conditions for a civil appeal under Article 133 are hereunder:

1. The subject of appeal is a judgment, decree or final order.
2. The High Court grants a certificate for such appeal which is at the discretion of the High Court that the case is a fit one for decision of the Supreme Court on appeal, provided, of course, the case involves a 'substantial question of law'.

According to P. Ramanatha Aiyar[1] an order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding. When nothing remains to be tried and the rights in dispute between the parties have already been determined, the order is a final order within the meaning of Article 133 of the Constitution.[2] If the decision on an issue puts an end to the suit, the order is undoubtedly a final one.[3]

In some of the decisions where this question arose, one following tests was applied:

(1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?

(2) Was it made upon an application upon which the main dispute could have been decided?[4]

If the suit is still left alive and has yet to be tried in the ordinary, no finality could attach to the order.[5]Sumali had filed two petitions in the High Court for quashing of F.I.R. and challenging the constitutional validity of Section 66A of Information Technology Act. The High Court had subsequently dismissed the petitions. It is humbly contended that in the present case that the dismissal of the two petitions does not amount to a final order.

The initial criminal proceedings based on the F.I.R. recording the criminal offences under Section 505 of IPC and Section 66A of Information Technology Act committed by Sumali subsist irrespective of the ruling of the High Court. The criminal proceedings are still alive

[1] Aiyar, P. Ramanatha, *Advanced Law Lexicon,* (3rd Ed., 2005), Wadhwa Nagpur
[2] Jethanand & Sons v. State of UP, AIR 1961 SC 794
[3] Mohan Lal Magan Lal Thacker v. State of Gujarat, AIR 1968 SC 733
[4] Aiyar, P. Ramanatha, *Advanced Law Lexicon,* (3rd Ed., 2005), Wadhwa Nagpur
[5] Mohan Lal Magan Lal Thacker v. State of Gujarat, AIR 1968 SC 733

and the decision of the High Court does not bring such proceedings to an end. The order was not capable of determining the preliminary criminal dispute. Therefore, such order cannot be deemed to be a final order within the meaning of Article 133 for the Hon'ble Supreme Court to exercise its civil appellate jurisdiction. It was held in *R. v. Secretary of State for Home Affairs*,[6] that if the cause or matter is one which, if carried to its conclusion, may result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a criminal cause or matter. It is humbly contended before this Hon'ble Court that there is no doubt that in the present case if the appeal filed by the petitioner remains dismissed, then the police will continue its investigation which may result in a trial and there is a possibility of a conviction for an offence which involves punishment of imprisonment or fine.

It was held in Dalmia Jain Airways Ltd. v. Union of India & Ors.[7] that quashing of First Information Report and the proceedings thereof, amounts to a criminal proceeding as it involves the probability of conviction for an offence which involves punishment of imprisonment and fine. Therefore, the Court stated that such criminal proceedings could not be brought to the Supreme Court under its civil appellate jurisdiction within the meaning of Article 133 of the Constitution. It is humbly contended before this Hon'ble Court that the criminal proceedings for quashing the F.I.R. cannot be brought to the Supreme Court under Article 133 of the Constitution. Therefore, the appeal is not maintainable in this Hon'ble Court.

ISSUE 2:

ABUSE OF PROCESS IS INVOLVED IN THE MATTER OF THE ARREST OF SUMALI & FILING OF F.I.R

Requirement for Abuse of Process of the Court

The scope of exercise of power under Section 482 of the Cr.P.C & the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out by the Honourable Supreme Court in State of Haryana v. Bhajan Lal,[8]

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value & accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

[6] (1943) AC 147 (B)
[7] AIR 1956 P H 1
[8] State of Haryana v. Ch. Bhajan Lal. AIR 1992 SC 2042 : 1992 Cr.L.J. 527 (SC)

2. Where the uncontroverted allegations made in the F.I.R. or complaint & the evidence collected in support of the same do not disclose the commission of any offence & make out a case against the accused.
3. Where the allegations made in the F.I.R or complaint are so absurd & inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
4. Where the allegations in the first information report & other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Cr.P.C except under an order of a Magistrate within the purview of Section 155(2) of the Code.

The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R and that the extraordinary or inherent powers do not confer arbitrary jurisdiction of the Court to act according to its whim or caprice.[9]

SUBMISSION (A):

There is No Abuse of Process in the Matter of Filing F.I.R Against Sumali

Contention 1:

The F.I.R registered against Sumali discloses the Commission of a Cognizable Offence

The First Information Report stated that the Petitioner's action is a criminal offence under Section 505 of the Indian Penal Code read with Section 66 A of Information Technology Act 2000. It is submitted before this Hon'ble Court that the allegations made in the F.I.R, taken at their face value and accepted in their entirety, prima facie constitute an offence and make out a case against the Petitioner. Only the essential or broad picture need to be stated in the F.I.R and all minute details need not be mentioned therein. It is not verbatim summary of the prosecution case.[10]

The Ingredients of the offences under section 505 of IPC are as follows:[11]

If the offence falls u/s. 505(1)(b):

a. The accused made, published or circulated, a statement, rumour, or report;

[9] State of Harayana v. Ch. Bhajan Lal 1992 AIR SCW 237 quoted in Rupan Deol Bajaj v. Kanwar Pal Singh Gill

[10] Baldev Singh v. State of Punjab, AIR 1996 SC 372

[11] Nelson, R.A. Sarvaria, S.K. Indian Penal Code 9th Edition, Volume 4, LexisNexis Butterworths; Ratanlal & Dhirajlal, The India Penal Code, 29th Edition, Wadhwa & Company Nagpur

b. He did so with the intent to cause, or which was likely to cause, fear (or alarm) to the public (or to a section of the public); &

c. Thereby a person was induced to commit an offence against the: i. State or ii. Public Tranquillity.

If the Offence falls u/s. 505(1)(c):

a. The accused made, published, or circulated, a statement, or rumour, or report; &

b. He did so with the intent to incite, or which was likely to incite, a class (or community) of persons to commit an offence against another class or community.

The Offence falls under section. 505(2):

a. The accused made, published, or circulated, the statement (or report), containing rumour (or alarming news), in question; &

b. He did so with intent to create, or which was likely to create, feelings of enmity or ill-will between different religious, racial, language or regional groups or castes or communities on grounds of :

i) Religion, ii) Race, iii) Place of Birth, iv) Residence, v) Language, vi) Caste or community, or on any other ground whatsoever

The comments posted by the Petitioner on her Facebook page satisfy the ingredients of the abovementioned sections. She had in fact, made a comment over a sensitive issue on her Facebook page. The number of followers of Acharya Sukh Dev in the capital city of Dharmapur was 45,00,000 within the total population of 1,50,00,000.

The comments were made by the petitioner at the time when his followers were mourning his death and were capable of causing agitation among them. The comments were made by the petitioner at the time when his followers were mourning his death and were capable of causing agitation amongst the followers. Therefore they could have been inudced to commit an offence against public tranquillity, thus, satisfying the ingredients of Section 505(1)(b). Furthermore, her comment was likely to cause the followers to commit an offence against the Atheist group, known as Indian Rationalists, thus, satisfying the ingredients of Section 505(1)(c).

There had been 1118 incidents of severe clashes between these two groups before Acharya Sukh Dev's death. Keeping in view the tensions between the two classes or communities of people, the comments made were likely to create, feelings of enmity or ill-will between the followers of Acharya Sukh Dev and Indian Rationalists as these two groups encompassed

different beliefs about life. Therefore, the ingredients of Section 505(2) are also satisfied. Therefore, her acts fall within the ambit of sections 505(1)(b), 505(1)(c) and 505(2) of IPC.[12]

The Ingredients of the offence under section 66A of the Information Technology Act are as follows:[13]

Section 66A prohibits sending any electronic communication which contains any information which,

a. is grossly offensive or has menacing character; or
b. the sender knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will sends;
c. is sent for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages.

The actions of the Petitioner are sufficiently covered under Section 66A of the Information Technology Act as her statements were false in nature and were made with the purpose of causing annoyance, inconvenience, insult or ill-will amongst various members of the community. If the facts mentioned in the F.I.R prima facie disclose cognizable offence, then the High Court if not required to look into the veracity, reliability, sufficiency and adequate proof of the facts alleged to make a meticulous scrutiny and whether all the ingredients have been precisely spelled out in the complaint is not the need at this stage.[14]

The Honourable Supreme Court has observed that an F.I.R is not supposed to be an encyclopaedia of events. The fact that fact that minute details are not mentioned should not be taken to mean the non-existence of the fact stated.[15] Any information disclosing a cognizable offence is conveyed to officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer cannot refuse to register a case on the ground that the information is not reliable or credible.[16]

F.I.R is a document which sets the criminal law in motion and it has to be appreciated keeping in mind the facts and circumstances of individual case.[17] When any preson approaches the police and prays for registration of a F.I.R the police has no option but to register the F.I.R

[12] Kedarnath Singh v. State of Bihar, (1962) 2 CrLJ 103; AIR 1962 SC 955
[13] Guppa, Apar Commentary on Information Technology Act, 2nd Edition 2011
[14] Ajit Pramod Kumar Jogi v. Union of India, 2004 CrLJ 3004
[15] Dharmendra Singh v. State of Uttar Pradesh, 1998 CrLJ 2064 (SC); State of Uttar Pradesh v. Krishna Master, AIR 2010 SC 3071 : (2010) 12 SCC 324 : 2010 CrLJ 3889
[16] Gurmito v. State of Punjab, 1996 Cri LJ 1254 at 1258 (P&H); State of A.P. V. P. Ramulu, 1993 Cri LJ 3684 (SC)
[17] Jodha Kodha Rabri v. State of Gujarat 1992 CrLJ 3298(Guj); Bhagwan Singh v. state of Madhya Pradesh, (2002) 4 SCC 85; 2002 SCC (cri) 736

and thereafter start the investigations.[18] The concerned officer is duty bound to register the case on the basis of the information disclosing a cognizable offence.[19]

The police officer has been held to be duty bound to register the case on receiving information of a cognizable offence. The reliability of information is not a condition precedent for registration.[20] Thus the police also cannot refuse to register the case on the ground that it is either not reliable or credible.[21] Recording of F.I.R at Police Station is an official act and so presumption of due performance of a public duty is attached.[22]

SUBMISSION (B):

There is No Abuse of Process in the matter of Investigation Conducted by the Police under Section 156(1) and Section 157 & Arrest of Sumali under Section 157 of the Cr.P.C

Contention 1:

The Conditions Requisite for an Investigation under Section 157(1) are satisfied.

The commencement of investigation in a cognizable offence by a police officer is subject to the following conditions:

1. **The police officer should have reason to suspect the commission of a cognizable offence as required by S. 157(1).**

The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Cr.P.C, wherein the expression, "reasonable suspicion" is used. Section 157(1) requires the police officer to have reason to suspect only with regard to the commission of an offence which he is empowered. The expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise.[23]

[18] Murugan Subgh v. State, AIR 2009 SC 72 : (2008) 16 SCC 40; State of Haryana v. Ch. Bhajan Lal. AIR 1992 SC 2042 : 1992 Cr.L.J. 527 (SC)
[19] Ramesh Kumari v. State (NCT of Delhi), AIR 2006 SC 1322 : (2006) 2 SCC 667
[20] Lallan Chaudhary v. State of Bihar, AIR 2006 SC 3376 : (2006) 12 SCC 229
[21] Gurmito v State of Punjab, 1996 CrLJ 1254(P&H)
[22] Sone Lal v. State of Uttar Pradesh, AIR 1978 SC 1142 : (1978) 4 SCC 302
[23] State of Gujarat v. Mohanlal Jitamalji Porwal and Anr. AIR 1987 SC 1321

2. **The police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated by S. 157(1)(b).**

The condition precedent to the commencement of investigation Under Section 157 of the Code is that the F.I.R must disclose, prima facie, that a cognizable offence has been committed. The police do not have an unfettered discretion to commence investigation Under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. [24]

3. **Further, clause (b) of the proviso permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the materials which were placed before him at that stage, namely the information together with the documents, if any, enclosed.[25]**

Clause (b) of the said proviso imposes a fetter on a police officer directing him not to investigate a case where it appears to him that there is no sufficient ground in entering on an investigation. The police officer has to satisfy himself only on the allegations mentioned in the first information before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation. The petitioner posted comments on her Face Book page which satisfies the ingredients of offences described under Section 505(1)(b), 505(1)(c) and 505(2) of Indian Penal Code and Section 66A of the Information Technology Act. The First Information Report disclosed the commission of a cognizable offence abovementioned. Thus, the police officer had reason to suspect the commission of a cognizable offence based on the facts mentioned in the First Information Report.

Contention 2:

The Police have exercised their statutory powers in the Investigation Conducted under Section 156(1) and Section 157 of the Cr.P.C

Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government.

It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its

[24] State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., AIR 1982 SC 949 Chandrachud, C.J. while agreeing with the judgment of Justice A.N. Sen and Justice Vardarajan
[25] State of Haryana v. Ch. Bhajan Lal. AIR 1992 SC 2042 : 1992 Cr.L.J. 527 (SC)

duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under section 190 of the Code of Criminal Procedure, its duty comes to an end.[26]

The Police have the statutory right and duty to register every information relating to the commission of a cognizable offence. The Police also have the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected. These statutory rights and duties of the Police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required form a Magistrate to empower the Police to investigate into a cognizable offence.[27]

As the First Information Report filed in the present case disclosed a cognizable offence, the Police had the power to investigate and thereby, arrest the Petitioner under Section 157(1) of the Cr.P.C. The statutory right of the police to carry on investigation under this Chapter before a prosecution is launched, cannot be interfered with by the Courts either u/s. 501 or u/s. 482 of the Code.[28]

SUBMISSION (C):

There is No Abuse of Process in the matter of Arrest of Sumali by the Police under Section 41 of the Cr.P.C

Contention 1:

The Police have exercised their statutory powers in the matter of Arrest of Sumali under Section 41 of the Cr.P.Cs

According to Section 41(b) of Cr.P.C., a police officer, without an order from a Magistrate and without a warrant, can arrest a person against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence provided that:

(i) The police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) The police officer is satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the offence.

[26] S.M. Sharma Vs. Bipen Kumar Tiwari, (1970) 3 SCR 946

[27] Ram Lal Narang v. State of (Delhi Admn.), AIR 1979 SC 1791 : (1979) 2 SCC 322

[28] State of West Bengal v. S.N.Basak, AIR 1963 SC 447

The section confers very wide powers on the police in order that they may act swiftly for the prevention or detection of cognizable offences without the formality and delay of having to go to a Magistrate for order of arrest.

Arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.[29]

The police recorded an F.I.R. which disclosed the commission of cognizable offence abovementioned by Sumali. Thus, the police officer had reason to believe that she had committed the cognizable offence on the basis of such information recorded by them. Furthermore, the arrest was necessary to prevent Sumali from posting similar comments on Face Book which were capable of inciting feelings of hatred and enmity amongst different groups of people and disrupting the public order in general. The police needed to ascertain the real intention behind posting such comments by Sumali.

Contention 2:

The Subjective Satisfaction of the Police in order to Arrest a person under Section 41 of the Cr.P.C cannot be interfered with by the Court

When the condition precedent for the exercise of the power is the judgment or opinion or subjective satisfaction of the person upon whom the power is conferred, the court cannot interfere with that judgment or opinion or inquire into the propriety of the grounds for forming such opinion, unless the person or authority exercises the power in bad faith in for a collateral purpose.[30]

There are certain cases in which when the executive authority states in the order that it has reasonable grounds to believe a certain fact which gives its power to restrict the personal

[29] M.C. Abraham v. State of Maharashtra, 2002 (9) Scale 769 : 2003 (1) Supreme 126

[30] Makhan Singh v. State of Punjab, (1950) SCR 88 : AIR 1950 SC 27; Naranjan v. State of Punjab, (1952) SCR 395 : AIR 1952 SC 106; State of Nagaland v. Rattan, AIR 1967 SC 212 (224); Shibban Lal v. State of Uttar Pradesh, (1954) SCR 418; Prabhakar v. State of Maharashtra, AIR 1966 SC 424 (427-428); Pushkar v. State of West Bengal, AIR 1970 SC 852; Barium Chemical v. Company Law Board, AIR 1967 SC 295; Khagen v. State of West Bengal, AIR 1971 SC 2051

liberty of a certain person in a given case, the court has to accept its statement as conclusive and cannot go behind it and examine whether as a matter of fact there are reasonable grounds for believing the requisite facts exist.[31] Where the precedent condition to exercise of power is subjective, the satisfaction of the authority cannot be questioned as has been stated*: "He is alone to decide in the forum of his conscience whether he has a reasonable cause of belief and he cannot, if he has acted in good faith, be called on to disclose to anyone but himself that these circumstances constituted a reasonable cause and belief"* [32]

In other words, the existence of the circumstances which upon which the authority was satisfied cannot be questioned by the Courts[33] and the only question left for the Court is whether the authority exercised the power in good faith. The Court cannot undertake such an investigation as to sufficiency of the materials on which such satisfaction was grounded.[34] In a case of subjective satisfaction the sufficiency of the grounds which gave rise to the satisfaction of the authority is not a matter for determination of the Court for one person may be, though another may not be, satisfied on the same grounds.[35]

There can be no mala fides or bad faith attributed to the Police in the present case as the F.I.R registered against Sumali disclosed cognizable offences, and on the basis of the F.I.R the Police conducted a preliminary investigation under Sections 156(1) and 157 following which they arrested Sumali under Section 41 of the Cr.P.C There is no evidence to support the contention that it was a mala fide exercise of power.

SUBMISSION (D):

The Court Cannot Quash the F.I.R and the Investigation

The power has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The provision under section 482 is meant to advance justice and not to frustrate it.[36] Interference with the F.I.R at the threshold is to be done in very exceptional circumstances. If Fir discloses commission of offence, it cannot be quashed by HC.[37] The High Court neither has the power to quash the proceedings in police investigations

[31] Mukherjee v. State of West Bengal, AIR 1970 SC 852; Sodhi Samsher Singh v. State of Punjab AIR 1954 SC 276; Godaveri Parulekar v. State of Maharashtra AIR 1966 SC 1404; P.L. Lakhanpal v. Union of India, AIR 1967 SC 908
[32] R. Brixton prison, (1916) 2 KB 742
[33] State of Bombay v. Atmaram, AIR 1951 SC 157
[34] State of Bombay v. Atmaram, AIR 1951 SC 157
[35] Tarapada v. State of West Bengal, AIR 1951 SC 174
[36] State of Maharashtra v. Arun Gulab Gawali AIR 2010 SC 3762 : (2010) 9 SCC 701
[37] State of A.P. v. Aravapalli Vekanna AIR 2009 SC 1863

consequent upon a F.I.R made to the police in cognizable case nor the power to interfere with the statutory powers of the police to investigate a cognizable case.[38]

Contention 1:

Inherent Powers under section 482 of Cr.P.C Must be Exercised in Rarest of Rare Cases.

Exercise of power under Section 482, CrPC is an exception and the rule. The inherent jurisdiction is to be exercised carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.[39]The inherent power should not be arbitrarily exercised the normal process of criminal trial.[40] The High Court should not analyse the case of the complainant in the light of probabilities in order to determine whether conviction would be sustainable and that on such premise arrive at a conclusion that the proceedings are to be quashed.[41] No quashing of F.I.R before the entire prosecution evidence had come on record.[42] The High Court should be loath and circumspect extraordinary power under Section 482 of Cr.P.C. Social Stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the Court.[43]

Contention 2:

The Statutory Powers of the Police Cannot be Interfered With in the Present Case.

Where offences have been disclosed in the F.I.R, the High Courts under section 482 of the Cr.P.C should not interfere with the investigation and should permit police to complete it.[44] The High Court cannot quash the F.I.R when the police have not even commenced the investigation and no proceedings at all are pending in any Court in pursuance of the F.I.R.[45] The statutory power of the police to investigate into a cognizable offence cannot be interfered with under the inherent power of the High Court under S. 482, when there was no case

[38] State of West Bengal v. S.N.Basak, AIR 1963 SC 447 : 1963 (1) CrLJ 341; Hazari Lal v. Rameshwar Prasad, AIR 1972 SC 484 : 1972 CrLJ 298 (SC)
[39] CBI v. Ravi Shankar Srivastava, 2006 CrLJ 4052 (4053) : AIR 2006 SC 2872
[40] State of Bihar v. K.G.D. Singh, 1993 CrLJ 3537 (SC) AIR 1993 SCW 2861; Richpal Singh v. State of Rajasthan, 1993 CrLJ 3735 (Raj.)
[41] State of Karnataka v. M. Devendrappa, 2002 CrLJ 998 (SC)
[42] State of Delhi v. Gyan Devi, AIR 2001 SC 40 : 2001 CrLJ 124 (SC)
[43] Rashmi Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397
[44] State of Bihar v. Md. Khalique 2002 CrLJ 553 (SC)
[45] State of West Bengal v. Narayan K. Patodia, AIR 2000 SC 1405; Kurukshetra University v. State of Haryana, AIR 1977 SC 2289

pending at the time excepting that the person against whom investigation had started had appeared before the Court, had surrendered and had been admitted to bail.[46]

The inherent power cannot be exercised to stifle a legitimate prosecution. The High Court must refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material as is the present case. The High Court cannot analyse the case in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the prosecution cannot be proceeded with. [47]

ISSUE 3:

SECTION 66 A OF THE INFORMATION TECHNOLOGY ACT 2000 ACT DOES NOT VIOLATE ARTICLE 14, ARTICLE 19(1) (A) AND ARTICLE 21 OF THE CONSTITUTION.

Presumption of Constitutionality

The power to legislate is a plenary power vested in the legislature and unless these who challenge the legislation clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they do not succeed in their challenge to the enactment brought forward in the wisdom of the legislature.

A statute cannot be struck down merely because the Court thinks it to be arbitrary or unreasonable. Any such ground of invalidity must be related to a Constitutional provision, such as, Articles 14, 19 or 21. Challenge on ground of wisdom of legislation is not permissible as it is for the legislature to balance various interests[48]. The Legislature appreciates and understands the needs of the people, that it knows what is good or bad for them, that the laws it enacts are directed to problems which are made manifest by experience, that the elected representatives in a legislature enact laws which they consider to be

[46] State of West Bengal v. S.N. Basak, AIR 1963 SC 447; Hazarilal Gupta v. Rameshwar Prasad, AIR 1972 SC 484
[47] State of M.P. v. Avadh Kishore Chopra, AIR 2004 SC 517; CBI v. Ravi Shankar Srivastava, AIR 2006 SC 2872
[48] Mylapore Club v. State of Tamil Nadu (2005) 12 SCC 752

reasonable, for the purposes for which these laws are enacted and that a legislature would not deliberately flout a constitutional safeguard or right.[49]

The Legislature composed as it is of the elected representatives of the people is presumed to know and be aware of the needs of the people and what is good or bad for them and that a Court cannot sit in judgment over the wisdom of the Legislature.[50] Therefore usually the presumption is in the favour of the Constitutionality of the statute and the onus to prove that it is unconstitutional lies upon the person who is challenging it.[51] The allegations regarding the violation of a constitutional provision should be specific, clear and unambiguous and it is for the person who impeaches the law as violative of the constitutional guarantee to show that the particular provision is infirm for the reasons stated by him.[52]

The Courts are not concerned with the need or propriety of laws. The judicial function is not to canvass the legislative judgement, or to hold the impugned statute to be ill-advised or unjustified or not justified by the facts on which it is based. The function of the Courts is to see whether the law in question transgresses any constitutional restriction imposed on the legislature.[53] Therefore a law cannot be struck down merely because the court thinks it to be unjustified or unwise.[54] As the Supreme Court has stated: *"What form a regulatory measure must take is for the legislature to decide and the court would not examine its wisdom or efficacy except to the extent that article 13 of the constitution is attracted."*[55]

It is also well settled, first attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be.[56] In *Kedar Nath v. State of Bihar*,[57] s. 124 A of the India Penal Code., was interpreted in the narrower sense and was thus sustained against a challenge under Art. 19(2). Sedition was defined as meaning words, deeds or writings having a tendency or intention to disturb public tranquillity, to create public disturbance or to promote disorder. The Supreme Court rejected the border view of S. 124 A that incitement to

[49] Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 638; Vrajlal Manilal & Co. v. State of Madhya Pradesh, AIR 1970 SC 129; Bachan Singh v. State of Punjab, AIR 1982 SC 1325
[50] State of Andhra Pradesh v. McDowell & Co., AIR 1996 SC 1628 at 1641
[51] Charanjit lal Chowdhary v. Union of India, AIR 1951 SC 41; Bombay v. F.N. Balsara, AIR 1951 SC 318; Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942; Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101
[52] Amrit Banaspati Ltd v. Union of India, AIR 1995 SC 1340 at 1343
[53] Charanjit lal Chowdhary v Union of India AIR 1951 SC 41
[54] State of Andhra Pradesh v. McDowell & Co AIR 1996 SC 1628 at 1641:
[55] Delhi Cloth and Gen. Mill Co. Ltd. V. Union of India, AIR 1983 SC 937
[56] B.R. Enterprises v State of Uttar Pradesh Air 1999 SC 1867:
[57] AIR 1962 SC 955

public order was not an essential element of the offence of sedition under this section. This broad view would have made s. 124A unconstitutional vis-a-vis Art. 19(1)(a) read with Art. 19(2).

SUBMISSION (A):

Section 66 A of the Information Technology Act 2000 Act does not violate Article 14

Objective of Section 66 A

The original Section 66 of the IT Act 2000 was only limited to the hacking of the websites which proved to be ineffective in tackling the problems of wrongful emails, messages and campaigns on the social media like Facebook. The amendment was brought in and Section 66A of the IT Act was inserted in the statute book to tackle all such kinds of problems on the internet. By its simple definition the Section 66 A of the IT Act gives widest powers to stop any kind of objectionable email, messages on the social media, SMS etc.

If a stalker or fraudster uses the internet or other communication media to do an unlawful act the government cannot be a mere spectator because it is done in the virtual world Phishing is the internet age crime, born out of the technological advances in internet age. Phishing is a form of social engineering, characterized by attempts to fraudulently acquire sensitive information, such as passwords, usernames, login IDs, PINs and credit card details, by masquerading as a trustworthy person or business in an apparently official electronic communication, such as an email or an instant message. The phishing attacks will then direct the recipient to a web page (mirror webpage) so exactly designed to look as a impersonated organization's (often bank & financial institution) own website and then they cleverly harvest the user's personal information, often leaving the victim unaware of the attack.

The disguised email containing the fake link of the bank or organization is used to deceive or to mislead the recipient about the origin of such email and thus, it clearly attracts the provisions of Section 66A IT Act, 2000. Due to the misuse of the modern communication device and increased incidents of sending hate messages, threatening SMS, threatening Email to politicians, VIPs in politically charged environment, the legislature introduced Section 66A Information Technology (Amendment) Act, 2008. The IT Act includes Section 78 so that adequate consideration, at an appropriate level, is given before charging someone under Section 66A. Section 78: Power to Investigate Offence: *"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the*

rank of Deputy Superintendent of Police shall investigate any offence under this Act."[58] Subsequently, on January 9, 2013, an advisory to State and Union governments was issued where the approval for such arrests was elevated to "an officer not below the rank of Inspector General of Police in metropolitan cities or of an officer not below the rank of DCP or SP at district level".

Contention 1:

Section 66A of the Information Technology Act, 2000 is not Arbitrary, Vague & Unreasonable.

The Supreme Court has observed in that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some constitutional infirmity has to be found before invalidating an Act. It cannot be declared invalid on the ground that it contains vague or uncertain or ambiguous or mutually inconsistent provisions.[59] Whether the standard offered by the statute is vague or not has to be decided and is to be determined upon an examination of the Act upon an examination of the Act read as a whole.

The judgment of *Director of Public Prosecutions v. Collins*[60]**,** a UK High Court decision sheds some light to what is "Menacing Character", in which it observed that: "*A menacing message, fairly plainly, is a message which conveys a threat – in other words, which seeks to create a fear in or through the recipient that something unpleasant is going to happen. Here the intended or likely effect on the recipient must ordinarily be a central factor in deciding whether the charge is made out. Obscenity and indecency, too, are generally in the eye of the beholder; but the law has historically treated them as a matter of objective fact to be determined by contemporary standards of decency*."

Further, House of Lords has clarified what makes a message sent by means of a public electronic communications network "grossly offensive" and therefore capable of amounting to a crime under the Communications Act 2003 in *Director of Public Prosecutions (Appellant) v. Collins (Respondent)*[61] on appeal from the abovementioned case. Their Lordships held that: "*To determine as a question of fact whether a message is grossly offensive, that in making this determination the Justices must apply the standards of an open and just multi-racial society, and that the words must be judged taking account of their context and all relevant circumstances. Usages and sensitivities may change over time.*

[58]

[59] Nand Lal v. State of Haryana, AIR 1980 SC 2097; 2100, A.K. Roy v. Union of India, AIR 1982 SC 711, 737

[60] [2005] EWHC 1308 (Admin)

[61] [2006] UKHL 40

Language otherwise insulting may be used in an unpejorative, even affectionate, way, or may be adopted as a badge of honour. There can be no yardstick of gross offensiveness otherwise than by the application of reasonably enlightened, but not perfectionist, contemporary standards to the particular message sent in its particular context. The test is whether a message is couched in terms liable to cause gross offence to those to whom it relates."

R. 3 of the Railway Services (Safeguarding of National Security) Rules 1949 says: "A member of the Railway Services who in the opinion of the competent authority is engaged in or reasonably suspected to be engaged in subversive activities may be compulsorily retired from service. Provided that a member of the Railway Services shall not be so retired unless the competent authority is satisfied that *his retention service is prejudicial to national security."* It was held that the expression "subversive activities" was not vague or indefinite when considered in the context of national security; no activity could be held by the authority to a subversive activity unless it was prejudicial to national security.[62]

The expressions such as "grossly offensive", "menacing", "annoyance", "inconvenience", "danger", "obstructions", "insult", "injury", "criminal intimidation", "enmity", "hatred" and "ill-will" which are present in Section 66A also appear in other legislations such as Section 20 (b) of the Indian Postal Act 1998, Sections 503, 504, 507, 295, 298, of the Indian Penal Code (IPC). In many of these cases under the IPC, imprisonment or fine or both can be levied and therefore they cannot be said to be vague and arbitrary.

Contention 2:

Section 66 A of the Information Technology Act 2000 does not vest Unguided and Unfettered Power on the Executive

Controlled discretion exercisable according to a policy for a purpose clearly enunciated by a statute does not suffer from the vice of conformant of unrestricted discretion.[63] Discretionary power is not necessarily discriminatory when the legislative policy[64] is clear from the statute and the discretion is vested in the Government or other high authority as distinguished from a minor official[65], or when the Rules framed under the Act lay down principle or factors to be taken into consideration in exercising discretion[66]; or there are other safeguards against its

[62] Balakotaiah v Union of India, AIR 1958 SC 232
[63] Federation of Railway officers Association v. Union of India, AIR 2003 SC 1344
[64] Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532; Bhikasu Yamasa Kshatriya v. Sangamner Akola Taluka Bidi Kamgar Union, Air 1963 SC 806; Amar Singhji v. State of Rajasthan, AIR 1955 SC 504; Jyoti Prasad v. Union Territory, AIR 1961 SC 1602(1609);
[65] Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532; Matajog v. Bhari, AIR 1955 SC 44 (48)
[66] Tika Ramji v. State of U.P., AIR 1956 SC 676

improper use, such as limitation in duration, appeal.[67] A discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed.[68] A statute carries with it a presumption of constitutionality. Such a presumption extends also in relation to a law which has enacted for reasonable restrictions on the fundamental right. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.[69] Section 66A is the substantive law whereas the safeguards against its improper use have been adequately provided in the Code of Criminal Procedure, 1974

Contention 3:

Possibility or Susceptibility of Wanton Abuse does not render Section 66 A of the Information Technology Act, 2000 as Arbitrary or Unreasonable.

The bare possibility that the discretionary power may be abused is no ground for invalidating a statute.[70] The possibility of abuse of a statute otherwise valid does not impart to it any invalidity.[71] The presumption is that public official will discharge their duties honestly and in accordance with the law.[72] Arbitrariness on the possibility that a power may be abused, despite the guidelines, in the provisions providing for such power cannot be held to be arbitrary and unreasonable.[73] Once the policy is laid down by law it cannot be held invalid merely on the ground that the discretion conferred by it may be abused in some cases and may be exercised in a manner which is in fact discriminatory.[74] If the power is actually abused in any case the exercise of the power is actually abused in any case, the exercise of the power may be challenged as discriminatory or mala fide, [75] but the statute will not fail on that ground.[76] The Supreme Court has reiterated the principle that mere likelihood of abuse of discretionary power conferred under statute would not render the statutory provision unconstitutional.

There is always a difference between a statute and the action taken under a statute i.e. the statute may be valid and constitutional but the action taken under it is invalid. Thus, while considering the validity of Section 47A of the Stamp Act the Court held that an arbitrary

[67] Sukhwinder v. State of Punjab, AIR 1982 SC 63
[68] Naraindas v. State of M.P. AIR 1974 SC 1232
[69] People's Union of Civil Liberities v. Union of India, AIR 2004 SC 1442
[70] Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532
[71] R.K. Garg v Union of India 1985 1 SCC 641; Union of India v Elphinstone Spinning and Weaving Co. Ltd AIR 2001 SC 724
[72] Pannalal v. Union of India AIR 1957 SC 397
[73] Commissioner of Central Excise Jamshedpur v. Dabur (India) Ltd., (2005) 3 SCC 646
[74] Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532
[75] Naraindas v. State of M.P. AIR 1974 SC 1232; Thakorebhai v. State of Gujrat; AIR 1975 SC 270
[76] Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532

market value whether or not based on extraneous considerations can always be challenged in judicial review proceedings.[77]

When a statute is impugned under Article 14, it is the function of the court to decide whether the statute is so arbitrary or unreasonable that it has to be struck down. At best, a statute upon a similar subject deriving its authority from another source can be referred to, if its provisions have to be held to be unreasonable, or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context,[78] and the extent to which it is not unconstitutional.[79] Mere factor that some hardship or injustice is caused to someone is no ground to strike down the rule altogether if otherwise the rule appears to be just, fair and reasonable and not constitutional.[80]

SUBMISSION (B):

Section 66 A of the Information Technology Act, 2000 Act does not violate Article 19(1)(a)

There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed to be essential to the safety, health, peace, general order and morals of the community. What the Constitution, therefore, attempts in declaring the rights off the people is to strike a balance between individual and social control. Article 19 gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law so that they do not conflict with public welfare or general morality.[81] While it is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. Accordingly, under Article 19(2), the state may make a law imposing 'reasonable restrictions' on the exercise of the right to freedom of speech and expression 'in the interests of' the securities of the State, friendly relations with foreign States, public order, decency, morality, sovereignty and integrity of India, or 'in relation to contempt of Court, defamation or incitement to an offence.'

[77]

[78] State of Madhya Pradesh v. Mandavar, AIR 1955 SC 493; Bar Council, Uttar Pradesh v. State of Uttar Pradesh, AIR 1973 SC 231

[79] Javed v. State of Haryana, AIR 2003 SC 3057

[80] AP Coop All Seeds growers Federation Ltd. V. D. Achyuta Rao, (2007) 13 SCC 320

[81] Gopalan v. State of Madras, (1950) SCR 88 (253-4); Santokh Singh v. Delhi Administration, AIR 1973 SC 1091; Laxmi v. State of U.P., AIR 1971 SC 873

Contention 1:

The restriction imposed by Section 66 A are Reasonable and Fall under the ambit of Article 19(2):

Individual rights cannot be absolute in a welfare state. It has to be subservient to the Rights of the public at large.[82] In *Santosh Singh v. Delhi Administration*,[83] it was held that the test of reasonableness of restriction has to be considered in each case in the light of the nature of right infringed, the purpose of the restriction, the extent and nature of the mischief required to be suppressed and the prevailing social order and conditions at the time. There can be no abstract standard of reasonableness and our Constitution provides reasonably precise general guidance in that matter.

When a law is impugned as having imposed a restriction upon a Fundamental Right, what the Court has to examine is the *substance* of the legislation without being beguiled by the mere appearance of the legislation.[84] *'Regulation'* and not *'extinction'* is, generally speaking, the extent to which permissible restriction may go in order to satisfy the test of reasonableness.[85] *The possible or remote effects* of legislation upon any fundamental right cannot be said to constitute a restriction upon the right.[86]

If the legislation *indirectly* or *incidentally* affects a citizen's right under Art. 19(1) it will not introduce any infirmity to the validity of the legislation.[87] A piece of legislation which may impose unreasonable restrictions in one set of circumstances may be eminently reasonable in a different set of circumstances. In such cases, public *interests* should be kept in mind.[88] In determining the reasonableness of a law challenged as an unreasonable restriction upon a Fundamental Right guaranteed by Art. 19, the court has to balance the need for individual liberty with the need for social control and the magnitude of the evil which is the purpose of the restrictions to curb or eliminate so that the freedom guaranteed to the individual subserves the larger public interests.[89] A restriction which is commensurate with the need for protection

[82] Confederation of Ex-serviceman Association v. Union of India, (2006) 8 SCC 399 : AIR 2006 SC 2945
[83] Santosh Singh v. Delhi Administration, AIR 1973 SC 1091
[84] Express Newspapers v. Union of India, AIR 1958 SC 578; Bennett Coleman & Co. Ltd. v. Union of India, AIR 1973 SC 106; Sukhnandan v. Union of India, AIR 1982 SC 902
[85] Bennett Coleman & Co. Ltd. v. Union of India, AIR 1973 SC 106
[86] Express Newspapers v. Union of India, AIR 1958 SC 578; Bennett Coleman & Co. Ltd. v. Union of India, AIR 1973 SC 106; Sukhnandan v. Union of India, AIR 1982 SC 902
[87] Akashi Padhan v. State of Orissa, AIR 1963 SC 1047; Hamdard Dawakhana v. Union of India, AIR 1960 SC 554
[88] State of Madras v. Row, (1952) SCR 597; Cooverjee v. Excise Commissioner, (1954) SCR 873; Virendra v. State of Punjab, AIR 1957 SC 896
[89] Harakchand v. Union of India, AIR 1970 SC 1453

of the public cannot be said to be unreasonable[90], even though it may cause hardship in individual cases.[91] No restriction can be said to be unreasonable merely because in a given case it operates harshly.[92]

Article 66 A of the I.T. Act lays down mere regulatory measures for control of vices such as threatening e-mails, threatening messages, messages causing criminal intimidation etc. Hence, there is no *'extinction'* of the Freedom of Speech and Expression. If at all, it is just *"regulation"*. Also, the word 'restriction' includes 'prohibition'. Under certain circumstances, therefore, a law depriving a citizen of his Fundamental Right may be regarded as reasonable.[93] Hence, it is submitted that the restriction imposed by Article 66 A is a reasonable restriction under Article 19(2).

Contention 2:

Article 66 A has a "Direct and Proximate nexus" to its Object:

The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or approximate and reasonable connection[94] or nexus with public order, but not one which is far-fetched, hypothetical, problematic or too remote.[95] It must be *rationally* proximate and direct to be called reasonable.[96] Once the connection between the restrictive legislation and the permissible ground is rational, the Legislature has the discretion as to the expediency of the *stage* at which the restriction is to be applied. Thus, it is not prevented from providing against threatened or apprehended injury as distinguished from actual injury.[97]

Under Article 19(2), a restriction can be imposed 'in the interests of' public order, etc. The expression 'in the interests of' gives a greater leeway to the legislature to curtail freedom of speech and expression, for a law penalising activities having a tendency to cause, and not actually causing public disorder, may be valid as being 'in the interests of' public order. However, the restrictions imposed must have a reasonable and rational relation with the public order, security of state, etc.

[90] State of Maharashtra v. Rao Himmatbhai Narbheram, AIR 1971 SC 1157
[91] Sivarajan v. Union of India, AIR 1959 SC 556
[92] Krishna Kakkanth v. Govt. of Kerala, AIR 1997 SC 128; See also Municipal Corporation, City of Ahmedabad v. Jan Mohd. Usmanbhai, AIR 1986 SC 1205; M.J. Sivani v. State of Karnataka, AIR 1995 SC 1770
[93] Narendra Kumar v. Union of India, AIR 1960 SC 430
[94] Arunachala Nadar, M.C.V.S. v. State of Madras, AIR 1950 SC 300
[95] Superintendent Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633
[96] O.K. Ghosh v. E.X. Joseph, AIR 1963 SC 812
[97] Virendra v. State of Punjab, AIR 1957 SC 896

The Apex Court has held that Penal laws which define offences and prescribe punishments for the commission of offences do not attract Article 19(1) as these are not laws having a direct impact on the Rights conferred by Article 19(1). A law is hit by article 19 if the direct and inevitable consequence of such law is to take away or abridge any of the freedoms guaranteed by Article 19(1). If the impact of the law on any of the Rights under Article 19(1) is merely incidental, indirect, remote or collateral and is dependent upon factors which may or may not come into play, the anvil of Article 19 will not be available for judging its validity. In pith and substance, penal laws do not attract article 19(1) as these laws do not deal with the subject matter of Article 19(1). In the instant case, therefore, Article 66 A, being a penal law, cannot be said to attract Article 19(1) as its impact, if at all any, on the freedom of speech and expression is incidental, indirect and very remote.

"Public order" is an expression of wide connotation and includes public safety or interest[98] and signifies that *state of tranquillity* prevailing amongst members of a political society. Danger to human life and *safety* and *disturbance of public tranquillity* also fall within the purview of the expression.[99] The term 'public order' covers a small riot, an affray, breaches of peace, or acts disturbing public tranquillity.[100] Public order is, therefore, virtually synonymous with public peace, safety and tranquillity.[101]

The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason directs.[102] The lists of reasonableness have to be viewed in context of the issues which faced the Legislature. In the construction of such laws and in judging their validity, Courts must approach the problem from the point of view of furthering the social interest which is the purpose of the Legislation to promote.[103] The standard of reasonableness must vary from age to age and be related to the adjustments necessary to solve the problems which community faces from time to time.[104]

It is, therefore, humbly submitted that Article 66 A has a direct and proximate nexus to its object i.e. maintenance of public order. It is a regulatory measure which, inter-alia provides against threatened or apprehended injury. It has a direct nexus to preservation of public tranquillity, as it can be used to prevent electronic communication from inflaming the public

[98] Emperor v. Sibnath Banerjee, AIR 1943 FC 75
[99] Romesh Thappar v. State of Madras, AIR 1950 SC 124
[100] Madhu Limaye v. S.D.M. Monghyr, AIR 1971 SC 2486
[101] O.K. Ghosh v. E.X. Joseph, AIR 1962 SC 812
[102] Janath Mosque v. Vakhon Joseph, AIR 1955 TC 227 (FB)
[103] Municipal Corporation, City of Ahmedabad v. Jan Mohd. Usmanbhai, AIR 1986 SC 1205
[104] Jyoti Pershad v. Union Territory of Delhi, AIR 1961 SC 1602

or a group of people, thus destroying or hampering public order, via designs such as mass hate-messages, criminal intimidation etc. Therefore, even if it operates harshly in isolated cases, its ultimate object is the maintenance of public order and safety, to which it has a direct and proximate nexus.

Contention 3:

The mere possibility of abuse of legislation is no test of its reasonableness:

The question whether the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause.[105] Where the vesting of discretionary power by the Legislature is justified, the mere possibility of abuse of power by the Executive is no test for determining the reasonableness of the restriction imposed by the law.[106] If, however, the statutory power or discretion is shown to have been abused by the authorities, the person aggrieved shall have his remedy against the illegal order[107], but that would be no ground for invalidating the Statute itself.[108] In *Municipal Committee v. State of Punjab*, it was held that a law cannot be struck down as violative of a Fundamental Right merely "*on the ground that it is vague"*.[109] It is humbly submitted, therefore, that Article 66 A of the I.T. Act cannot be held to be unreasonable for the aforementioned reasons

SUBMISSION (D):

Section 66 A of the Information Technology Act, 2000 Act does not violate Article 21

Individual rights cannot be absolute in a welfare state. It has to be subservient to the Rights of the public at large.[110] The right of life and liberty so guaranteed under Article 21 is also subject to the rule of proportionality.[111] Liberty is the right of doing an act which the law permits.[112] Liberty is confined and controlled by law as it is regulated freedom. It is not an abstract or absolute freedom. The safeguard of liberty is in the good sense of the people and in the system of representative and responsible Government which has been evolved. Liberty is itself the gift of law and may bye law be forfeited or abridged.[113]

[105] Arunachala v. State of Madras, AIR 1959 SC 300 (303).
[106] Khare v. State of Delhi, AIR 1950 SC 211
[107] Virendra v. State of Punjab, AIR 1957 SC 896
[108] Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465
[109] Municipal Committee v. State of Punjab, (1969) 1 SCC 475
[110] Confederation of Ex-serviceman Association v. Union of India, (2006) 8 SCC 399 : AIR 2006 SC 2945
[111] Om Kumar v. Union of India, (2001) 2 SCC 386 : AIR 2000 SC 3689
[112] Kartar Singh v. State of Punjab, (1994) 3 SCC 569
[113] ADM Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207

Where individual liberty comes into conflict with an interest of the security of the state or public order, the liberty of the individual must give way to the larger interest of the nation.[114] There can be no liberty without social restraint. Liberty of each citizen is born of and must be subordinated to the liberty of the greater number, in other words, common happiness as an end of the society. The essence of civil liberty is to keep alive the freedom of individual subject to the limitation of social control, which could be adjusted according to the needs of the dynamic social evolution. Section 66A imposes social restraint on the liberty of an individual since an individual's liberty is subordinated to the Liberty of the society.[115]

The Assam Disturbed Areas Act, 1955 (Assam Act) & The Armed Forces (Special Powers) Act, 1958 confer very broad powers on the Government and the police officers. The State Government can declare any area in Assam as a disturbed area. Police Officers not below a certain rank, and military officers then get the power to fire upon or use force even to the extent of causing death for maintain public order. The validity of both the Acts was questioned on the grounds inter-alia, that there was no safeguard to possible abuse in exercise of the powers conferred by the Acts in question. The Delhi High Court upheld both the Acts in Inderjeet Barua v. State of Assam.[116] If to save hundreds of lives, one life is put in peril or if a law ensures and protects the greater social interest then such a law will be regarded as a wholesome and beneficial law although it may infringe the liberty of some individuals.

It will ensure for the liberty of the greater number of the members of the society at the cost of one or a few. [117] The Court has further emphasized that it is the duty of the State to preserve Law and Order. It is the State's duty to see that the Rule of Law enunciated by Article 21 is available to the greatest number. Individuals have the right of private defence and even a stranger can act to prevent crime. If individuals have such a right surely the State can enact a statute to subserve the social purpose of ensuring Public Order, so that life and liberty are preserved. The Power of the State Government to declare any area as a "Disturbed Area" was held not to be arbitrary. Such an area is one, where disorder of such type prevails so as to be regarded as a public order problem. The term Public Order is not vague.[118]

[114] Sunil Fulchand Shah v. Union of India, AIR 2000 SC 1023
[115] Kartar Singh v. State of Punjab, (1994) 3 SCC 569
[116] AIR 1983 Delhi 513
[117] Ibid 525
[118] The Indian Statutes use three terms for describing breakdown of law and order. These are, in the ascending order of seriousness, "Law and Order", "Public Order" and "Security of State." Law and Order comprehends disorders of less gravity than the term Public order which comprehends disorders of less gravity that those affecting Security of State. As explained by the High Court, One has to imagine three concentric circles. Law

The vast power conferred on the Police and Military officers, held the Court, could not be regarded as arbitrary, or in other words, unjust, unfair and unreasonable. There are sufficient safeguards postulated to ensure proper exercise of power, example first the area must be declared as disturbed, S. 144 of Cr.P.C. must be in force. Only so much force must be used as necessary in the circumstances of the situation, if it is feasible to give a warning then the warning must be given before firing.[119] Similarly Section 66A with adequate procedural safeguards in the Code of Criminal Procedure, 1973 subserves the social purpose of ensuring Public Order, which is the Duty of the State to preserve.

It its quest for fairness or reasonableness, the court would not question the penal policy behind a law, e.g. the provision for absolute liability which a statutory minimum sentence of imprisonment for the commission of anti-social offences, irrespective of gravity or otherwise of the offence in a particular case,[120] or the provision for maximum sentence, empowering the court to reduce it in particular cases, on proper grounds.[121] *"The purpose of the criminal law is to permit everyone to go about daily lives without fear of harm to person or property. And it is in the interest of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness on all sides."*[122]

To ensure fairness on all sides there must be harmony and accord between the rights of two individuals or the rights of an individual on one hand and the society on the other hand. Every individual in the society has been guaranteed the rights under Article 21 however since the interests and necessities of the collective, i.e. the society as a whole takes precedence over the singular interests of one person, any law which prescribes specific limits on the exercise of the rights enshrined under Article 21 with the end being the continuation of peaceful public life cannot be said to be violative of Article 21. Since Section 66A has been enacted to achieve that end which is tantamount to peaceful interactions between members of the society without violating public order, it does not transgress Article 21.

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and Order represents the largest circle within which is the next circle representing Public Order and the Smallest Circle represents Security of State. Ibid 530

[119] Ibid at 535

[120] Inderjeet v. State of Uttar Pradesh, AIR 1979 SC 1867

[121] Inderjeet v. State of Uttar Pradesh, AIR 1979 SC 1867

[122] Attorney General's Reference, (No. 3 of 199) (2001) 1 All ER 577; R v. Sargent, (2002) 1 All ER 161 (HL). See also Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, pp. 762-63

PRAYER FOR RELIEF

Wherefore in the light of the facts stated, issues raised, authorities cited and arguments advanced, it is most humbly prayed before this Honourable Court that it may be pleased to:

1. Dismiss the appeal filed against the order of the High Court not quashing the F.I.R;

In the alternative,

1. Uphold the Order of the High Court as there has been no abuse of Process of the Court;

2. Declare that Section 66A of the Information Technology Act, 2000 is not violative of Article 14, 19 (1) (a) and 21 of the Constitution of India and hence constitutionally valid.

AND/OR

Pass any other order that it deems fit in the interest of Justice, Equity and Good Conscience.

And for this, the Respondents as in duty bound, shall humbly pray.

COUNSELS ON BEHALF OF RESPONDENT