December 14, 2012

PRIVATE MEMBERS' BUSINESS (RESOLUTIONS)

RESOLUTION RE. NEED TO AMEND SECTION 66A OF INFORMATION TECHNOLOGY ACT, 2000

at 2.30 pm

MR. DEPUTY CHAIRMAN: Now, Shri P. Rajeeve to move a resolution regarding need to amend the Information Technology Act, 2000. 66A

SHRI P. RAJEEVE (KERALA): Sir, I move the following Resolution: -

"Having regard to the fact that -

(i) the Internet, an international network of interconnected computers that enables millions of people to communicate with one another in cyberspace and to access vast amounts of information from around the world has provided an unprecedented platform for citizens to exercise their fundamental right of freedom of speech and expression, the freedom to create and innovate, to organize and influence, to speak and be heard;

(ii) in the last few months, a number of cases have come to light on how section 66A of the Information Technology Act, 2000 (herein after referred to as Act) is being arbitrarily used by the law enforcement agencies to arrest citizens in various parts of the country for posting comments on internet and social networking websites;

(iii) although the offense is bailable, the citizens are being detained without being granted bail and various countries have criticized these incidents as a slap on India's democracy;

(iv) the language and scope of legal terms used under section 66A of the Act are very wide and capable of distinctive varied interpretations with extremely wide parameters which have not been given any specific definitions under the law;

(v) clause (a) of section 66A of the Act uses expressions such as 'grossly offensive' and 'menacing character' which are not defined anywhere and are subject to discretionary interpretations;

(vi) clause (b) of section 66 A prescribes an imprisonment term up to three years for information that can cause annoyance, inconvenience, insult, criminal intimidation, thereby bundling disparate terms and providing similar punishment for criminal intimidation and causing inconvenience;

(vii) clause (c) of the same section although intended to handle spam nowhere defines it and makes every kind of spam a criminally punishable act, which is also against the world-wide norms;

(viii) the offence under section 66A of the Act is cognizable, and has made it possible for police to arrest citizens at odd times for example arresting two 21 years old women in Mumbai after sunset and a businessman at 5.00 a.m. in Puducherry;

(ix) right to freedom of speech and expression is the foundation of all democratic countries and is essential for the proper functioning of the process of democracy;

(x) only very narrow and stringent limits have been set to permit legislative abridgment of the right of freedom of speech and expression;

(xi) the Supreme Court has given a broad dimension to Article 19 (1)(a) by laying down that freedom of speech under Article 19 (1)(a) not only guarantees freedom of speech and expression, it also ensures the right of the citizen to know and the right to receive information regarding matters of public concern;

(xii) in interpreting the Constitution we must keep in mind the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society and the increasing needs of the nation and for this, the approach should be dynamic, pragmatic and elastic rather than static, pedantic or rigid;

(xiii) there are tremendous problems in the way section 66A of the amended Act has been drafted as this provision though inspired by the noble objectives of protecting reputations and preventing misuse of networks, has not been able to achieve its goals;

(xiv) the language of section 66A of the amended Act goes far beyond the reasonable restrictions on freedom of speech, as mandated under Article 19 (2) of the Constitution of India;

(xv) India, being the world's largest vibrant democracy, reasonable restrictions on freedom of speech need to be very strictly construed and section 66A of the amended Act, needs to be amended to make the Indian Cyber law in sync with the principles enshrined in the Constitution of India and also with the existing realities of social media and digital platforms today;

(xvi) it has been pointed out that section 66A of the Act has been based on United States Code, Title V (Sections 501 & 502) of Telecommunication Act titled Communications Decency Act (CDA), it must be brought to the notice of this House that the United States Supreme Court has held that the CDA's "indecent transmission" and "patently offensive display" provisions which abridge "the freedom of speech" protected by the First Amendment and thus unconstitutional, for instance, its use of the undefined terms like "indecent" and "patently offensive" provoke uncertainty among speakers about how the two standards relate to each other and just what they mean;

(xvii) the vagueness of such a content-based regulation, coupled with its increased deterrent effect as a criminal statute, raises Special First Amendment concerns because of its obvious chilling effect on free speech; and

(xviii) it has also been stated that section 66A of the Act has been based on United Kingdom's section 127 of the Communication Act, 2003 which addresses improper use of public electronic communication network but the application of that section is restricted to a communication between two persons using public electronic communications network, i.e., mails written persistently to harass someone and not "tweets" or "status updates" that are available for public consumptions and which are not intended for harassment, also, the intention or *mens rea* element is crucial in it and further, the maximum punishment has been only up to six months in contrast to the three years mandated by Section 66A of the Act,

this House urges upon the Government to —

(a) amend section 66A of the IT Act, 2000 in line with the fundamental rights guaranteed under the Constitution of India;
(b) restrict the application of section 66A of the Act to communication between two persons;
(c) precisely define the offence covered by Section 66A of the Act;
(d) reduce the penalty imposed by section 66A of the Act; and
(e) make the offence under section 66A of the Act a noncognizable offence."

Sir, the country has witnessed several cases of arrests and other incidents under this section. Recently, in November, 2012, one girl was arrested for questioning the shutdown of Mumbai following the death of Shiv Sena supremo, Bal Thackeray, in her Facebook post. This post was 'liked' and 'shared' by her friend. 'Liking' and 'sharing' is done by just pressing the mouse or pressing your finger on i-pad or any other device. It is a very, very simple exercise. By just 'sharing' this post, her friend was also arrested. Sir, these two girls were arrested after sunset and both of them were jailed. This happened under this draconian Act. The authorities invoked the provision of section 66A to harass social media usages. In April, Prof. Mahapatra,

a Chemistry Professor in Jadavpur University in West Bengal, was arrested for posting a cartoon in social media sites. In May, two Air India employees were arrested by the Mumbai police for their postings in Facebook and Orkut. They remained in custody for twelve days. In October, Ravi Srinivasan, a businessman, was arrested by the Puducherry police for tweeting something regarding *

(Contd. by KR/2c)

SC/KR/2C/2.35

SHRI P. RAJEEVE (CONTD.) .. and one cartoonist and an activist Mr. Asim Trivedi was also arrested by the Mumbai Police under this Section. These are some examples. We can find out several other examples and different cases from different parts of our country. This is misuse of the Act. Actually, this is not misuse. This is real use of the Act which the Section is intended to use. While replying to a question, today, during Question Hour, the hon. Minister has said,

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* **Expunged as ordered by the Chair.**

"This is not misuse." I totally agree with him that this is not misuse of the Act, the application of the Section which is intended to be used. I must say that this is one of the draconian Acts in our country.

While considering these incidents, we can see some distinction in between print media, visual media and new media. Equality is one of the fundamental rights of our Constitution. Print media, visual media and new media should have the same provision as Right to Free Speech and Expression. Most of the print media and visual media have published and telecasted several articles and stories against the *hartal* in Mumbai. Some of them have published serious cartoons which are more critical than which was posted by Prof. Mohapatra. Some print media brought editorials on this issue which is more critical than new media. Then, why none of them was booked? I am not demanding that. They are availing free speech and expression as enshrined in our Constitution. All of us are aware that there is no specific law for protecting freedom of the press in our country. It is interpretation of article 19 (1) of our Constitution which ensures Right to Free Speech and Expression. The media is enjoying this freedom. The country is benefiting from that. We are ensuring the democratic

nature of our system. But then why is this not allowed to the new media? A person can think and write criticising what incident has happened in the print media. A person can write a story criticising one thing in the visual media. But if some persons just tweets a thing -- sometimes the access is only for 100 or 150 persons, sometimes it is for 2 or 3 persons -- then, they are booked and arrested after sunset and they were jailed for several days. This is totally unconstitutional. I totally agree that freedom is not absolute. Article 19(2) of our Constitution strictly mentions the reasonable restrictions on article 19(1) of our Constitution. I am not against the regulation on internet. While moving the Resolution, I have clearly said about it. But I am totally against the control of the internet where the freedom ends. Regulation is okay as per article 19 (2) of our Constitution.

Now, the Minister, Mr. Kapil Sibal had declared some new guidelines for Section 66A of the Act. He did it publicly while the Parliament was in session. It was reported in the media. While answering to the question, he has stated that he had brought it to the attention of the State Governments and convened a meeting of the stakeholders and followed it up in the Advisory Council meeting. I am

very happy to hear the Minister. While moving the Resolution, there was no statutory body or Advisory Council as per the IT Act. Now, I congratulate the Minister for constituting the Advisory Council. But according to these guidelines before registering complaints under Section 66A as per media reports junior police officials will have to seek the approval from an officer in the rank of Deputy Police Commissioner in rural areas and Inspector Generals in metros.

(Continued by 2D/VK)

VK/2D/2.40

SHRI P. RAJEEVE (CONTD): This is a cosmetic treatment to divert the attention from the controversial Section 66A of the IT Act. As an eminent lawyer, Shri Kapil Sibal is well aware that these guidelines have no backing of law. The primary legislation is the Act as passed by the Parliament. The subordinate legislation is the rules and regulations. It should be in accordance with the parent Act; it should not be *ultra vires*. These guidelines are only the third stage of legislation. Guidelines cannot overrule the reach of the main legislation. Are the new guidelines in accordance with the IT Act? No, Sir. It is contradictory to Sections 78 and 80 of the Act, which

give powers to police officers of the rank of an inspector to investigate cyber crimes. Section 78 – Power to Investigate Offences says, "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of an inspector shall investigate any offence under this Act." This is the position in this Act. How can you go beyond the provision of this Act delegating officers of the rank of IG or of the rank of DGP for implementing this provision? While Section 80 of the IT Act says, "Power of police officer and other officers to enter, search, etc.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, any police officer, not below the rank of an inspector, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act."

This is the provision in the Act. No Government has the power, no executive has the power to go beyond the Act which gives power to a police officer of the rank of an inspector. How can a Minister or

an executive get this power to give this new direction? This is totally contradictory to this Act. As a very eminent lawyer, Shri Kapil Sibal is well aware of that. This has no legislative backing and no legal backing. This is an exercise to divert the attention from the controversial Section 66A of the IT Act. This is only a direction. It is not a rule. It does not have the force of law. It is just an eye wash to quell the public pressure. The problem lies with the Act itself. It is absurdly poor worded and anti-democratic legislation. Sir, a faulty law cannot be implemented better by a person of higher rank. Then these new guidelines are not an answer to this problem. The main issue is the Act itself.

Now I come to the draconian provisions of Section 66A of the IT Act. After the IT Act was passed in 2000, there were regular reports of cyber crimes and tax enforcement that surrendered them. It is true that in this atmosphere the Government had decided to amend the IT Act. That is true. All of us agree to it. The first amendment Bill was prepared in 2006. The provision of Section 66A appeared all of a

sudden. I have gone through all the documents, but I could not find a legislative note which explains its presence.

SSS-LT/2E/2.45

SHRI P. RAJEEVE (CONTD.): That is true. While answering the question, the Minister clearly stated that. The Parliamentary Standing Committee gave a unanimous report to strengthen the provisions and increase the punishment. I am very happy to hear from the Minister like Mr. Kapil Sibal that the Government is very, very eager to accept all the recommendations of the Standing Committee. I am very happy to hear from the Minister. But, Sir, the amendment Bill was passed along with seven other Bills in seven minutes on 22nd December in the Lok Sabha and it was passed in the Rajya Sabha on 23rd December, 2008, the last day of the Winter Session without any discussion! While we were going through Section 66A of this Act, Sir, any person who sends by means of a computer resource or a communication device (a) any information that is grossly offensive or has a menacing character or (b) any information which he knows to be false, what

was the purpose of causing annoyance, inconvenience? How can you define 'inconvenience'? It is very difficult for an objective interpretation. It is only easy for a subjective interpretation. We cannot blame a police officer, whether his rank is of an inspector or of a DCP or of an IG or of a DGP. How can he interpret this 'inconvenience'? How can he interpret this 'grossly offensive insult'? There is enough space for a subjective interpretation. Whether he is in the rank of an Inspector or a DGP or any higher post, how can the space not there be for objective interpretation? The space opens for subjective interpretation. Some of these things, like enmity, came under IPC. I will come to that point later and I would also like to give a comparison with some international legislation with regard to this. The first, of course, targets in electronic communication. That is 'grossly offensive.' This is not a foreign word. We can find the word in the Indian legislation. I will come to that at the end of my speech. The maker of this claim is defiant. Some of them are not even present in the penal code from which the legal ingredients of most offences can be fished out. This problem occurs again in the second clause also which makes any false information and it causes annoyance. Mr.

Harish Salve, a well reputed lawyer in this country, stated that India guaranteed the right to 'annoy' and there was no need to have a separate law. While arguing in the Supreme Court, it was reported in the media, that the existing laws are sufficient to address all these things. This specific section is not relevant to deal with these types of things. That is stated in the media. Some contain a laundry list of terms. They are very vague. Anybody can interpret as he wishes. Sir, Section 66A (c), actually, is intended to deal with spam mails but it never stayed. The major two characteristics of spam mail is not included in Section 64C, 66A (c) of this Section. It does not cover spam, but covers everything else. Sir, this provision is certainly unconstitutional. Sir, this clearly demonstrates that the law is vague and goes against a cardinal principle in the drafting of criminal statutes, that is, the law should be defined precisely.

-SSS/RG/2.50/2F

SHRI P. RAJEEVE (contd.): The phraseology of Section 66A was so wide and vague and incapable of being judged on objective standards that it was susceptible to wanton abuse. This gives enough

space for police officers for subjective interpretation and arrest anybody on their posting or sharing or sending e-mails. This Section is used in a way to say "any person who sends", and not publish. Why are they going after international legislations? The Minister, while he addressed the media, while he answered the question, compares it with international legislations, legislations of the U.S., the U.K., Australia and several other countries. But wherever this type of legislation says, "A person who sends it to another person", it is believed that it is not published. But while we are going through the explanation, which says, 'information created or transmitted', it is a very wide thing. Anybody can interpret it in any way. It is very easy to arrest any person by interpreting it. It is sent, but it is not going to be transmitted or received'. In this social media, one can post it; sometimes, it is not transmitted. This whole thing, not considering the specialties or objective realties prevailing in this new I.T. sector, the Information Technology, the internet and the social media, is a very poor drafting. I am very sure if the Minister had his time to just look into the drafting of the words, the framing of the Bill, — at that time, Shri Kapil Sibal was not the Minister of that portfolio — he, who is an

eminent lawyer of the country, would have never allowed this Section to be framed like this. This is very draconian, unconstitutional, very vague and against the basic principle of drafting of any statute, any criminal statute.

Sir, the Apex Court of the country saw a deeper problem with the wording of the provisions in the Act and also its implementation by State police officers, while considering the PIL recently. It also said that the wording of this Section is very wide as it can apply with regard to anybody or any activity. The Supreme Court, while hearing the PIL, stated that the wording of the Section is very wide as it can apply with regard to anybody or any activity. Thanks to the passing of the Judicial Accountability Bill, -- the hon. Minister, Shri Veerappa Moily is there -- this type of remarks in the open court would not be allowed. But this is the remark of the Judges while hearing this case. This was reported in the media. And the hon. Minister is not ready to accept that reading of the Judges. While replying to the question, he strictly took the position that it was in accordance with article 19 (1)(a) of the Constitution. This Section questions the fundamental right of speech and expression as enshrined in the Constitution of

India. Article 19(1)(a) of the Constitution ensures the right to freedom of speech and expression. Article 19 (2) of the Constitution, specifically, defines the reasonable restriction. Section 66A of the I.T. Act goes beyond article 19(2) of the Constitution, that is, reasonable restriction. The Supreme Court held in the Express Newspapers Private Limited versus the Union of India that if any limitation on the exercise of the fundamental right under article 19(1) does not fall within the four corners of article 19(2), then, it cannot be upheld.

-RG/NBR-SCH/2G/2.55.

SHRI P. RAJEEVE (CONTD.): So, Sir, Section 66A is totally unconstitutional. It goes far beyond Article 19(2) of the Constitution.

Sir, the provisions of Section 66A of the IT Act and already existing clauses in the IPC, which deal with similar offences, should be compared. While the punishment under the IPC for criminal nuisance is only Rs. 200, but the penalty imposed under Section 66A is imprisonment up to three years! Sir, I would not like to take more time. But, under Sections 500, 501 and 502 of the IPC, the maximum punishment is up to two years imprisonment. But, under Section 66A,

the punishment is up to three years in jail! Let us read Section 504 of the IPC. It covers provocation that will cause break in public peace or commission of an offence, the maximum punishment is only two years. Under Sections 500, 501, 502 of the IPC which deals with defamation, printing or engraving defamatory material, and selling it is punishable. If I tweet a thing which is defamatory -- sometimes it would be 100 or 150 maximum; Sachin Tendulkar is the number one on the social website (Tweeter) -- I should be booked under Section 66A and imprisoned for three years. But, for the same thing, under Sections 500, 501 and 502 of the IPC, which deals with defamation, printing or engraving defamatory material -- not only printing but also selling it -- attracts the maximum punishment of two years!

Also, look at Section 507 of the IPC which deals with criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes, the maximum punishment is two years imprisonment or fine or both. But, as per Section 66A, any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee

or recipient about the original such messages shall be punishable up to three years of jail. Sir, this is the comparison with the IPC.

Sir, Section 66A prevents to send a mail from work address. When we go through the experience of Gmail, we will get work mail address. You can send it through your work address -- not by your personal mail -- but, after this Act, it is not allowed; it is a crime. If you are just sending your mail from your work address then you are punishable for three years imprisonment. And, Sir, 'tunneling' and other type of things are also prevented under Section 66A.

The main defense of the Ministry and the Minister himself is that the UK and the US have the exact same wording. That is true; the controversial section has borrowed words out of context from the British and the American laws. Actually, it is a poor cut-and-paste exercise, without applying mind. Some officials did it; they just cut some from the UK law and pasted it here. Sir, it has taken from the UK's Post Office Act, 1935. It says:

"If any person --

(a) sends any message by telephone which is grossly offensive or of an indecent, obscene, or menacing character..."

Here, Section 66A of the IT Act says:

"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..."

Here, the wording is also the same, but there is a deletion of just one thing. It is the same wording of the UK's Post Office (Amendment) Act, 1935.

KS/2H/3.00

SHRI P. RAJEEVE (CONTD.): "(b) sends any message by telephone, or any telegram, which he knows to be false, for the purpose of causing annoyance, inconvenience, or needless anxiety to any other person;". Here, the wording of Section 66A, is exactly the same as it is there in the UK's Post Office Act of 1935. It is the same

wording, Sir. Anyway, I would not like to take more time on this. But I would definitely like to emphasise that the wording in most of these clauses is the same as that of the UK's Post Office Amendment Act of 1935. But, Sir, as per the UK Act, the fine does not exceed ten pounds, whereas, here, it is imprisonment up to a maximum of three years! As per UK's Act, it is either imprisonment for a term not exceeding one month, or both, fine and imprisonment.

Sir, Section 66A bears a striking resemblance to three parts of this 1935 law, with Clauses B and C being merged into a single Clause B of 66A, with a whole bunch of new "purposes" added. Interestingly, we have a similar Act, the Indian Post Office Act, 1898, which was never amended to include these provisions. The Post Office Act was never amended to incorporate the provisions of the UK Act. Sir, let me highlight the difference between the provisions of these two Acts, the UK Act and the Section 66A of the IT Act. The first major difference is in regard to the term of imprisonment. In the 1935 Act, the maximum term of imprisonment is only one month. In the IT Act, as per Section 66A, the maximum term of imprisonment is up to three years. The current equivalent laws in the UK are the

Communications Act, 2003 and the Malicious Communications Act, 1988...

MR. DEPUTY CHAIRMAN: You have already taken thirty minutes, Mr. Rajeeve,

SHRI P. RAJEEVE: I am concluding, Sir. I mentioned that the current equivalent laws in the UK are the Communications Act, 2003 and the Malicious Communications Act, 1988, as per both of which, the penalty is up to six months' imprisonment, or a maximum fine of 5000 Pounds or both. What is surprising is that in the Information Technology (Amendment) Bill of 2006, the penalty for Section 66A was up to three years; earlier, it was two years, but on the recommendation of the Standing Committee, it had been increased to three years. Sir, some of the language is taken from the Britain's Malicious Communications Act of 1988, which begins with the words "any person who sends to another person". This is the important difference in the international legislation and our section 66A of the IT Act. This is intended to curb malicious message from one person to another. It does not cover a post on a social website. In the UK Act, the section is restricted to a communication between two persons

using public electronic communication network, that is, mails written personally to harass someone and not Tweets or status updates that are available for public consumption, which are not intended for anybody's harassment. Sir, earlier, the hon. Minister, while answering to a question, had made some comparison with the constitutional validity of the UK and US laws. The plain fact is that the Indian Constitution is stronger on free-speech grounds than the 'unwritten' UK Constitution. The Judiciary has wide powers for judicial review of statutes. That is not so in UK. There is some provision in the European Commission. But, in UK, there is no provision for judicial review. Judicial review is the ability of the court to strike down a law passed by Parliament as unconstitutional. They believe that Parliament is supreme, unlike in India.

Kgg/2j/3.05

SHRI P. RAJEEVE (contd.): Putting those two aspects together, a law that is valid in the U.K. might well be unconstitutional in India for failing to fall within the eight octagonal walls of the reasonable restrictions allowed under article 19(2).

What is the litmus test for the Constitutional validity of a provision? It is not a comparison with any international legislation. It is not a comparison with the U.K. legislation. It is not a comparison with the Australian or the U.S. legislation. As an eminent lawyer, Mr. Kapil Sibal is well aware that the litmus test for Constitutional validity of any legislation is a comparison with article 19(2)--whether the reasonable restrictions fall within the provisions of the Constitution or they go beyond that. This definitely goes beyond article 19(2) of the Constitution.

Sir, the term 'grossly offensive' is in the Indian legislation, that is, in section 20(b) of the Indian Post Office Act. It is there in the Indian Constitution. We are not going to the U.K. or the U.S. for the defence of the term 'grossly offensive'. It is here in the Indian Post Office Act for prohibiting sending by post materials of indecent, obscene, seditious, scurrilous, threatening or grossly offensive character. The big difference between section 20(b) of the Indian Post Office Act and section 66A of the IT Act is that the former is clearly restricted to one-to-one communication, the way the U.K.'s Malicious Communication Act, 1988, is. Reducing the scope of

Section 66A to direct communications would make it less prone to challenge.

Sir, in this Section, some people are making criticism that there should be a strong provision because there have been pornography and that there have been encroachments in the cyberspace. There are enough provisions in this IT Act --- Section 66B – punishment for dishonesty; Section 66C – punishment for identity theft; Section 66D – punishment for cheating; Section 66E – punishment for violation of privacy; Section 66F – punishment for cyber terrorism; Section 67 – punishment for publishing or transmitting obscene material in electronic form; Section 67A – punishment for publishing or transmitting material containing sexually explicit, etc., in the electronic form; Section 67B – punishment for publishing or transmitting of material depicting children in sexually explicit acts. There are various provisions. These provisions are sufficient to address this new danger.

Before concluding, I would like to say one more thing. I got a privilege to move the first Annulment Motion in the history of Parliament in regard to the IT Intermediary Guidelines, 2011. While intervening in the discussion, the Minister gave an assurance in this

House that consultation process would be initiated and whatever consensus was reached, it would be incorporated in the rules. I got a very short notice for the consultative meeting. I was not in a position to personally attend that meeting. I gave a detailed note to the Ministry. But, I never got any information from the Ministry as to what was going on. In July, the Minister gave the assurance.

Sir, just like Section 66A, the Intermediary Rules go beyond the reasonable restrictions on the freedom of speech, as mandated under article 19(2) of the Constitution. The law on defamation has enough teeth to deter those on social media who may be doing mischief. As correctly stated by Mr. Harish Salve, it could be extended to include electronic communications. This section is a blot on the Indian democracy. India is considered as a vibrant democracy with large demographics where the majority of the population is below the age of 27. Internet has become the most preferred medium for this section of the people for sharing their views and thoughts. I am not against any regulation on the Internet. But, I am totally against controlling the Internet where the freedom ends. The IT Act contains several provisions including Sections 66A and 79 which go beyond the limit of

article 19(2) of the Constitution. Several organisations like Free Software Movement in India and Democratic Alliance for Knowledge Freedom conducted protests in different parts of the country.

KLS/2K-3-10

SHRI P. RAJEEVE (CONTD): Most of the national media wrote editorials criticising this draconian Act. Mr. Minister, the public opinion is solely against this. You should recognise the public opinion and the public mind. Sir, I urge the Minister to amend the IT Act, including Section 66 (A) in accordance with article 19(2) of the Constitution. For the time being, the Government should come out with new rules under this Act clearly limiting the scope of Section 66 (A) and others to be in conformity with the freedom of speech and expression guaranteed under article 19 of the Constitution of India. Sir, I hope the Minister will recognise the feeling of the young generation of this country, feeling of the democratic people of the country and intervene with an assurance that the Government will amend the draconian IT Act. Thank you, Sir.

(**Ends**)

The question was proposed.

SHRI MANI SHANKAR AIYAR: Can I associate myself with him?

SOME HON. MEMBERS: We also associate ourselves. ...(Interruptions)...

MR. DEPUTY CHAIRMAN: In speeches, you cannot associate yourselves. You can speak ...(Interruptions).... Now, Dr. Pilania. One or two specific names have been taken by him who cannot come here and defend themselves. Those names have been expunged.

DR. GYAN PRAKASH PILANIA (RAJASTHAN): Sir, I thank you for your kind indulgence. You have asked me to participate in today's discussion. It is a very important and timely issue which has been raised through this Resolution by Shri Rajeeve. I congratulate him. I salute him for this Resolution because it has focused attention on the illegality or *ultra vires* nature of Section 66(A) of the IT Act. I would not blame hon. Shri Kapil Sibal for this piece of legislation. It is his hon. predecessor, famous A Raja, who made amendment in the Bill on 16th December, 2008 which was passed by the Lok Sabha on 22nd December, 2008 and by Rajya Sabha on December 23, 2008, without discussion. That was the trouble. Had there been a detailed

discussion, had there been an elaborate thinking, this legislation would not have been passed. But somehow in a hurry it went through. Finally, what is to be decided about this legislation will be at the door of the Supreme Court where a PIL is pending. It is interesting, Sir, that concerned about the widespread abuse of Section 66 (A), Shreya Singhal, a 20 year old girl from Delhi, filed a Public Interest Petition in the Supreme Court challenging the section's constitutionality. In her petition, which was admitted for hearing on 29th November, 2012, she submitted that the phraseology of section 66 (A) was so wide, vague and incapable of being judged on objective standards and that it was susceptible to wanton abuse. This is what Mr. Rajeeve's speech is, this is what Gyan Prakash says and this is what is being said by media. I feel convinced that after hearing a detailed and elaborate plea of Shri Rajeeve, I think, our learned Law Minister is convinced that there is a need to change it. There is hardly any need for much elaboration by me. Sir, hell broke loose on that fateful day when two young girls, innocent girls were incarcerated. They were arrested by police.

(Contd by 2L/USY)

USY-MCM/2L/3.15

DR. GYAN PRAKASH PILANIA (CONTD.): That shook the conscience of the people. That shook the conscience of the Media. And, they revolted against the draconian law. It happened on 18th of November, 2012, Sunday, when Ms. Shahina Dhada, 21 years of age, posted a comment on Facebook, saying, "Mumbai Bandh on Sunday was due to fear and not due to any respect to someone." And, it is interesting to note what she wrote. With your permission, I will quote it so that this august House is able to see whether she was really offensive. She wrote, "Every day thousands of people die." Is it not a truth? She wrote, "But still the world moves on." Is it not a truth? She wrote, "Just due to one politician died, a natural death, everyone just goes crazy. When was the last time did anyone show some respect or even a two-minute silence for Shahid Bhagat Singh, Azad, Sukhdev or any of the people because of whom we are free, free as a citizen?" This is what she wrote. What will be offensive there? What will be abusive there? What will be creating havoc in the country? She was arrested after evening. Unfortunately, one friend of her also agreed with her because she thought what she had said was alright.

It offended the law-makers. It offended those who have wielded power. She was detained. A mob gathered there. Vandals struck at a hospital, which was run by her uncle. A damage of rupees fifteen lakh was caused, but nothing happened. She was arrested on Sunday and she was kept there till late Monday night. This shook the conscience of the people. When the matter went to the Supreme Court, the Supreme Court said, I am quoting in verbatim, "Somebody has blundered." It was said by the Bench of Justice Altamas Kabir and Justice J. Chalmeshvaram, while expressing anguish over the Mumbai arrest, to Attorney General G.E. Vahanavati, wondering what motive guided the Mumbai cops to slap non-bailable offences of the Indian Penal Code against two young girls from Palgarh. The Bench wished to know what action was initiated against the cops who arrested the girls after sunset. What is the guarantee that such arrests would not happen in future? What is the guarantee that the IG of Police or the Deputy Commissioner of Police would not falter again. Result of bad laws, if put into action by good officers, does not come out good. That is what to be thought of. The Attorney General said what State Police did was unjustifiable and indefensible. Fine! But he

found no fault with the law, as hon. Kapil Sibal is also not finding any fault with the law. Our submission is that there is fault with the law. Today, in reply to a question, a pre-judge judgement has been given that there does not appear to be any need to amend the law on this count. It is pre-judging the issue. I will again revert to what people say about it. There was a poll, conducted by *The Hindustan Times*.

PK-HMS/2M/3.20

DR. GYAN PRAKASH PILANIA (CONTD.): The result of that poll was:-- Sir, I will just submit in a second —76.06 per cent people said, "It was misuse of the law." Sir, this was a poll. Poll may not be a law, but the poll reflects what people feel about something. What people feel is more important for those who frame the law. People's feeling should be reflected in the law and people's feeling should be respected also. Ours is a vibrant democracy in which a hundred thoughts contend and collide with each other without fear or without being muzzled by the State. This is what our Preamble says; this is what Fundamental Right under Article 19 says and this is what Fundamental Right under Article 21 says. Right to dissent is the most

important. The famous French philosopher Voltaire, the votary of independent thinking and free expression, said, "I may not agree with what you say, but I will defend till my death your right to say so." That is the crux of the problem and that is the root of the democracy — right to disagree, right to dissent and right to give expression. You need not feel annoyed just because I have expressed an opinion which is against yours. Let it be judged on the balance of rationality. Not only these two girls, there is a long list, which has already been cited by Shri Rajeeve, of the people who have been arrested under this law. But, ultimately, what sparked the issue was the arrest of those two innocent young girls, who just out of frivolity or out of their conviction wrote something on Facebook. Our Deputy Leader of the Opposition has very rightly said, -- I am just quoting it because I feel it hits the proper nuance in the matter -- "An April fool joke among friends could be interpreted as causing annoyance and punishable by a jail term if it was sent over the electronic medium. It is an abuse of electric medium." Sir, electric medium is the latest thing behind the freedom of expression. Electric medium is that vehicle through which

an expression can be given within seconds for the whole world to think and ponder upon. Gauging electric medium through section 66A would be anarchy, would be something very unfortunate. I will, again, give verbatim what the Supreme Court has provisionally mentioned. It was on 30th November, 2012 that the Supreme Court said, "The provision was widely worded. The recent arrest of three youngsters in Mumbai under the contentious section 66A of the Information Technology Act served as an eye opener to the Court. The provision is widely worded to bring under its sweep any activity or any person having dangerous repercussions on the life and liberty of individuals." The Supreme Court Bench wished to know what action was initiated against Mumbai cops who arrested the girls, whether they have already been punished or they are under the process of punishment. That is all right. But the Supreme Court has issued notices and it has given six week's time when hearing will be there. That will be the time to concede and beseech the hon. Law Minister, that somehow erroneously this section has been brought in the Act; we want to modify it; we want to amend it; or, we want to withdraw it.

-PK/PB/2n/3.25

DR. GYAN PRAKASH PILANIA (CONTD.): That will be the occasion and that will be, I think, his sagacity and goodness.

Sir, I will just close by saying one thing. As Rabindranath Tagore had said, "We should be in a country where head is held high." Our plea is only that, please, somehow, properly modify Section 66A so that our head is held high in this country and we are not gagged. Let us not be a nation of dump people. Let it be a nation of articulate people who stand for their liberty, who stand for their freedom and who fight for it also.

(Ends)

MR. DEPUTY CHAIRMAN: Thank you very much.

DR. GYAN PRAKASH PILANIA: Thank you very much, Sir, for tolerating me so long.

MR. DEPUTY CHAIRMAN: No; thank you very much Pilaniaji. Now Shri Shantaram Naik.

SHRI SHANTARAM NAIK (GOA): Mr. Deputy Chairman, Sir, let me, at the outset, say that I am a Member who can be categorized as computer savvy, Internet savvy, iPad savvy, and what not. So, a

Member like me can't be against any philosophy of modern communication. In fact, myself and my good colleague, Dr. Natchiappan, are the two persons here who are called as iPad-savvy people. So, in all technologies, we are the most modern MPs; and I was the first MP who had used an iPad during his speech in this House -- the first MP. In fact, it was reported next day in a newspaper. Therefore, I am very much for this new technology, Internet mechanism, computers, etc. Therefore, basically and fundamentally, I can't be against any concerned freedom.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN) in the Chair

Let me also say, at the outset, that the action of the Police of Maharashtra in arresting those two girls was highly objectionable, and no civil society would have appreciated that action. But, Sir, what I am submitting is that an action of a Police officer or an action of an authority, which misuses a particular provision of law, doesn't mean that that provision should go out of the Statute Book. Many people in the country, in the past, have misused Section 322 of IPC, Section 307 of IPC or provisions relating to rape. All major provisions of IPC

have, on some day or other, been misused in some State or the other by some officer or the other. But it doesn't mean that those particular Sections should be taken out of the Statute Book. Many preventive detention laws have also been misused — we have to admit it — by certain officers. The courts have also punished them, rusticated them; but one cannot definitely say that because of such misuse, mishandling of law, those particular provisions should not remain on the Statute Book. No logical conclusions can be drawn, reasonably drawn, on account of this. Therefore, what one can do is, one can, somehow, rectify the approach of those who execute the law rather than deleting those Sections from the Statute Book. One can understand -- a suggestion by Rajeeveji — that a punishment can be introduced. One can understand that. That is quite a reasonable suggestion. But taking out a Section from any point of view is not the solution.

Secondly, striking further on a personal note, I would say that in my career at a time when I was under a little bit of depression, the computer was my best friend. I purchased a computer and started

my activities on computer and Net; and it helped me in my career. I would like to say that it helped me in my career.

SKC/2O/3.30

SHRI SHANTARAM NAIK (CONTD.): If today I am here, I give much credit to that box called the computer, without which I would not have been able to make a mark in public life. Today, people can download material from the Net. In fact, right now I have got the Information Technology Act at my residence; I came from Gujarat after an election campaign. I cannot have it in my hands all the time, but within minutes, from the Computer Section, I got the Act downloaded. Even while some Member is speaking and if some point strikes me, I refer to *Google*, write on my mobile or i-Pad and look for points to counter the points made by the Member. This is possible today. Earlier we used to go to the library for reference and got relevant points two days later, and so on. Therefore, the computer and Internet are helpful to the society. Today, writers and poets exchange their writings through the Internet. Thus, it has helped in many ways.

Then, Sir, according to me, the biggest advantage that Members of Parliament have is that by 6.00 or 7.00 p.m., we could access the entire debate, from 11.00 a.m. to 5.00 p.m., verbatim, on the Net. This is one of the biggest advantages that we have. Sometimes we may get proceedings of the Question Hour by 3 o'clock. I made a suggestion that Unstarred Questions that are laid on the Table of the House, which are made available in the print form in the lobby, should also be made available on the Net. At present they are available after two days, but some Ministries upload it on the same day. So, this is another advantage. I am trying to tell you how the phenomenon of Internet has helped the entire society including Members of Parliament. No national daily bothers to report all that we speak here and the questions that we ask. They are only bothered about what is happening in the well of the House. So, as far as I am concerned, the people in my State must know about it and so, after I have made my address or put my questions in the House, I go to the Computer Section or to my home, and on the Net I prepare my own Press Note which is published the next day in newspapers in Goa. That is how I communicate with the people of my State and inform

them as to what I have done in the House. So, this is another positive aspect of the Internet.

Sir, as I have said, I am Internet-savvy. I use the Facebook. Somebody may object, rightly so, but I use it to pass on certain valid information which I may get from the House. So, I put it on the Facebook, which is not published elsewhere. Normally it is just thrown into the dustbin. There was an Unstarred Question the other day in reply to which it was said that the Ministry of Railways had identified seven corridors for bullet trains. So, within a few years we are going to have bullet trains in seven corridors of India. That is such a big news. Not many knew about it. So, I put it on the Facebook, for a limited number of people who follow it.

Now I come to another aspect, which is a bit political in nature, and which may not be liked by some of my friends here. Sometimes it is said that Gujarat has made such great progress in all these years. I have statistics with me to show that previously, when the Congress was ruling the State, the rate of growth was 40 per cent, 25 per cent or 15 per cent. In the last ten years, the rate of growth has remained below 11 per cent. All Congress-ruled States had a higher rate of

growth, which point I made known through the Facebook; otherwise nobody published it. So, we get this advantage of informing the people as to what is happening.

Now, Sir, there is misuse too. I would talk about something which I think hardly anybody knows. Let me take the name of a newspaper, *The Times of India*. Let us say, an important political leader dies; the news appears in the newspaper the next day, but even before that it is put on the Net.

HK/3.35/2p

SHRI SHANTARAM NAIK (CONTD.): A person, who is an important leader and who has sacrificed for the nation, dies. Within one hour, you will get, at least, fifty comments below that news. Many of them say why this man did not die earlier; such people should die. I am telling this with regard to important personalities of the country. There was an air crash recently in which the Chief Minister of Arunachal Pradesh died. At that time, again the comment was "such defective jets should be supplied to all politicians so that all of them die." These are the comments published in the 'Times of India'. If a politician is

hospitalized, so many nasty things are written. I don't know why nobody has objected to these comments. Such people should be jailed and a greater amount of sentence should be provided to such people. So far I have seen that there are objections to Facebook, Twitter, etc., etc. What about these comments which appear day in and day out. Therefore, somehow, I am not inclined to accept the suggestion of my good friend, Shri P. Rajeeve. He said that it should not be made cognizable. Why? People are attacking innocent people in a manner which is both derogatory and defamatory, charging somebody's character, finishing somebody, perhaps, politically. Why shouldn't it be treated as cognizable offence? Take bail, go home and enjoy! How can it be? Therefore, it should be decided on case--to-case basis. But such offences have to be made cognizable if you want to provide a deterrent in such matters. In fact, I mentioned another aspect the other day through a Special Mention. But it was a very serious matter. It is relating to defamation. I am talking about defamation because there are now leaders born in streets every now and then. They defame you, me, Parliament, judiciary and everybody. They think that whatever they say is the philosophy of the

country. MPs, Parliament, Assemblies, etc., are of no use. For the last five or six months, we have heard nasty words from leaders born in street. In our country, there is a law dealing with defamation. Section 499 defines it; section 500 gives punishment. This is given in criminal law. People hardly file defamation suit because once you come in the witness box, your life history comes out during the cross-examination. This is one aspect. I come from the State of Goa where laws are different in some areas. What is the civil law on defamation? Suppose I want to claim Rs.1 crore for defamation compensation and I want to file a civil suit. Then, what is the law? But there is no Act of Parliament; there is no legislation dealing with this matter. I am told by some of the lawyers practising in some other States that they hardly get cases of civil defamation. In India, it is the Law of Torts that applies. Law of Torts is something which is very vague. Decisions have been given in the past by Privy Council. These decisions are followed and judgment is given accordingly. But many cases do not come. But it is unfortunate that our country does not have a statute or a civil law passed by Parliament to deal with defamation and to seek civil remedies on defamation.

GSP-GS-2Q-3.40

SHRI SHANTARAM NAIK (CONTD.): If that was done, some of the people would have controlled their tongue. If a suit could be filed and disposed of in a year's time, wherein claims of one crore or two crore of rupees are made, people would have thought twice before making any defamatory statement. Hon. Law Minister is not here but I hope Shri Kapil Sibal would convey this idea to the concerned Minister that we have to have a law on defamation to deal with this thing in general.

Now, Mr. Rajeeve is worried about the terms, 'grossly offensive' and 'menacing character' etc., and he says that there is no definition of these terms. Of course, every term cannot be described or defined. Ultimately, by necessity, we have to abide by the definition, which, in future, may be given by the Supreme Court of India as to what these two terms mean. Even if we define these terms, further definitions and further explanations will be given by the courts of law. Therefore, you cannot say that these are vague terms. Law will take its own course in defining these terms.

Secondly, as far as Supreme Court is concerned, in one of the parts of your Resolution, you said that the Supreme Court has given a broad dimension to Article 19(1)(a) by laying down that freedom of speech under Article 19(1)(a) not only guarantees freedom of speech and expression but also ensures the right of citizens to know and the right to receive information regarding matters of public concern. But these are past cases. Now, new technology, new tweets, new Facebook posts, whatever it is, are there, and, the hon. Supreme Court has to de-novo lay down these rules and decide whether these sections or remarks violate the Fundamental Rights. I think, that still has not come up. In due course of time, hon. Supreme Court will have to address this issue. Therefore, right now, we cannot say that the Supreme Court has already laid down such rules. The Act has come subsequently. These Acts have still not been taken up exhaustively by the Supreme Court, and, therefore, we have to wait for the Supreme Court to make any legislation.

Sir, I would also like to say that our students also take help of this information technology in downloading their projects. Earlier

when school teachers asked students to prepare any project, and, if, in the families, the father or the mother were not educated, the students had to face difficulty. Today, everybody has got access to computers, the Governments give computers to the students, and, the students do their own homework with the help of downloading. Students also use or misuse computers and internet for other things. For such cases, I would like to give a suggestion, and, this is pertaining to hon. Kapil Sibal's ministry. Sir, in every institution, some arrangement should be made to make students aware of the laws, which deal with cases of misusing the internet facilities. There are serious laws and there are serious punishments provided under the Act. Students must be made aware that if they misuse the internet facility, then, there is a law which provides necessary punishment.

Now, as far as information technology is concerned, RTI provides that every Government department should make available to the people information regarding their departments. But this is not being followed in many States. At least, at national level, there are good websites from where you can get information but, at the State level, in many places, you do not get information.

SK/2R/3.45

SHRI SHANTARAM NAIK (CONTD.): If these websites are updated and all information is made available, the task of information officers under the RTI, according to me, will be reduced to 50 per cent. Therefore, this technology has to be utilised in that manner. I don't know whether all-India Gazette is available on the website or not, but in my State, our local Gazette is available on the website. Maybe some of the States have also made it available on the website. Making available the weekly Government Gazette on the website is a must. Therefore, this technology has to be used for this purpose.

Another administration-related issue is this. Today, when State Governments write to the Central Government, their letter comes after 10 days or 20 days. I think e-mail facility has to be used with digital signature technology to correspond. If State Governments write a letter to the Central Government, the Central Government can reply maximum within two-three days through net by using digital signatures. If we still use post and other facilities and wait for a reply

for 15-20 days, one simple proposal takes years only because of this correspondence. Therefore, this can be reduced to that extent.

As far as this Resolution of Rajeeve*ji* is concerned, in fact, it is too long. It is your right, as it is permissible under the rules. But you have provided so many paragraphs in the Resolution whereby your concise concept has gone haywire. If it had been concise, the Resolution would have got more seriousness. In any case, your demand is that section 66A should be amended in line with the Fundamental Rights guaranteed under the Constitution of India. Who says that it is not in line with the Fundamental Rights today? Who has decided that? I for one still feel that it is perfectly in consonance with the Fundamental Rights. There is no ground given to say that it violates the Fundamental Rights. Let the court decide.

Then, reduce the penalty imposed here. I don't know, but perhaps the Government may consider it. As far as cognizable offence is concerned, I have already made myself clear that it has to remain a cognizable offence. You cannot make it non-cognizable to give all the freedom to this.

With these words, I think, I will advise my good friend that he has succeeded in having a debate earlier also in this House by challenging the related rules with respect to 66A. You have succeeded; you have done a good job. As far as your philosophy is concerned, I think, after this debate, you will kindly withdraw this Resolution. Thank you.

(Ends)

SHRI D. BANDYOPADHYAY (WEST BENGAL): Sir, I rise to support the principles involved in the Resolution, though the Resolution is a little too long for me to go through it and to understand the whole of it. But I do support that there is a merit in the Resolution. Sir, what is this 66A? It is basically defamatory matter. Indian Penal Code has defined long, long ago both the definition of defamation and the punishment in that. Now, IT is a new method of transmission. I can say a bad word to him, I can write a letter to him and it can be defamatory. But before the computer was discovered, there was no question of communicating it through computers.

-SK/YSR-LP/3.50/2S

SHRI D. BANDYOPADHYAY (CONTD.): IT has not created any new crime. The crime was already there. It is a question of transmission of that from one medium to another medium. Earlier it was oral. Then it was in writing. Then it was in the print media. Now it is the electronic media. The electronic media did not create any new crime. It has just made another avenue of committing the crime. So, why should we have a separate law for defamation when a defamatory or libellous matter is communicated through a medium of the IT? My point is very simple. We have a well established law for defamation. There is one for libel in civil law. Let us use those laws and incorporate the provisions of the IPC in section 66A. You can say that whoever commits this crime will be punishable under relevant section of the Indian Penal Code. Just because a new technology is there, we need not invent new crimes. It is not precise. Some of the terms in it are imprecise. The IPC is there on the statute book for 150 years. Umpteen number of cases came up before the Privy Council, the Federal Court, and the Supreme Court. They are very precise with their methodology and crimes are defined. I urge the Minister,

through you, Sir, let section 66A be there instead of creating a new crime. Put those crimes, which are already mentioned in the Indian Penal Code, here so that we do not have a plethora of crimes along with the change of technology. The world is moving very fast. Technology is moving very fast. For each technology we can't create a separate set of crimes. Crimes are basically the same. If there is anything very specific only relating to that particular technology, you can bring that in. But transmitting defamatory or libellous matter through the IT mechanism does not create a new crime. The crime was already there. You are just passing it through the IT methodology. That does not create a new crime.

My plea to the Government, through you, Sir, is that you put the normal sub-section relating to defamatory matter in the IT Act and say that they are punishable under the IPC so that we do not have a new set of crime. Two young girls in Mumbai were caught for nothing. The Supreme Court admonished the people. Some action will be taken against them. But this imprecision in law creates conditions in which it could be misused. Thank you very much, Sir.

(Ends)

SHRI BAISHNAB PARIDA (ODISHA): Sir, I thank you for having given me this opportunity to speak on the Resolution moved by my friend, Shri P. Rajeeve.

Sir, this is a very timely move by one of our learned friends in this House. It has brought up negative and harmful aspects of the IT Act which had been passed recently. The view or the opinion expressed in the Resolution of Shri P. Rajeeve does not confine to him. We can find this view now throughout the country.

-YSR/VKK/2t/3.55

SHRI BAISHNAB PARIDA (CONTD.): Through the print media, through the electronic media and even in public intercourses, the intellectuals and the conscious section of our society are expressing the fear that this IT Act is impeding the rights of individuals, right to speak, right to express, right to know, right to communicate, the fundamental rights, etc. It is impeding them and the recent events which were cited by Mr. Rajeeve and other friends have opened our eyes and shown how it harms the fundamental rights of the citizens. The case of two Mumbai girls, the event in Jadavpur University and in

many other places, within a few months, have proved that if we do not amend this Act, it will create hundreds of such cases in our country. And this has been realised not only by our people, but by people in foreign countries; the international media has also opined that in India, such a law has been passed by the Parliament which is hampering the fundamental rights of its citizens, which are the bedrock of our democracy.

Sir, this revolution in the information technology has provided unprecedented scope to exercise our fundamental rights of freedom of speech and expression, the freedom to create and innovate, and to organise and influence, to speak and be heard. The technology has given us this right. What are the senators of the American Parliament saying? What is the *London Times* saying? What are the thinking sections of the society in any other country saying about this Act? We must be very prompt to amend this Act so that it should not harm the fundamental rights of our citizens and should not create a bad image in international press and international arena. That is very important for us.

Mr. Ganguly was talking about the nature of the crime. Of course, the crime is the same as had been done before this IT revolution took place. But, now, the scope of this crime has definitely increased. The crime not only harms a few individuals, it also harms millions of our people within minutes and within days. The views expressed in tablets or computers of these two girls immediately reached throughout the country and throughout the world. We claim that we are very conscious. Our young boys claim that they are more courageous than our girls. But, what happened? The young boys, the young men, remained silent. I salute those two girls. From this House, I salute them. I admire them. The young people are courageous enough to safeguard the democracy which we have achieved through the sacrifice of our freedom fighters.

KR/2U/4.00

SHRI BAISHNAB PARIDA (**CONTD.**): This is a great assurance for our hon. Minister who himself is an eminent lawyer. We should be proud of these two young girls. We could not realise this flaw we when we enacted the Information Technology Act hastily. We did not have a

thorough discussion on the Bill before passing it. We couldn't foresee its consequences. But these girls have opened our eyes. Now, we should be very careful while enacting Acts. In Section 66A of the IT Act, there are certain terminologies which were misused by the organ of the State. Whatever may be the State, it may be a proletarian State, it may be a bourgeois State, and the organ of the State always tries to grab the power. Unless people become conscious, resist the grabbing tendency of the State organ, it harms the society and it hampers the progress of the society. It harms the morale of the society. The police force is the organ of the State. Sometimes our soldiers and sometimes our officers misuse the Act. This has been misused; and this will be misused. So, that should be rectified immediately.

I must thank my friend, Shri Rajeeve, that he has done a great job. The Minister should not reject it. As my friends have said, the Government should not take it lightly. It is a serious thing. We should take timely steps to rectify it.

The Mover of the Resolution has mentioned that "grossly offensive" words could be interpreted as has been done by the

Mumbai police to show their extra loyalty to some political force there. It had happened. It would happen in other cases also. The State organs will misuse powers in order to earn certain privileges. They show extra loyalty to please their bosses. They did it. Thanks to the Supreme Court, the guardian of the Indian democracy, they have said, "This is a misuse." As my friend said, let the Supreme Court decide it. The Supreme Court has given its verdict. There is a clear indication in that verdict. Now, it is the duty of the Legislature to amend the IT Act.

Fortunately, we are having Shri Kapil Sibal as the Minister who himself is a legal luminary. He knows better than us. We should not allow this loophole to continue any further; otherwise it will be misused by the organ of the State.

Therefore, I urge upon the hon. Minister to drop Section 66A or amend it so that it doesn't affect Fundamental Rights of the society which is the bedrock of our society. With these words, I conclude. Thank you very much.

(Ends)

VK2W/4.05

SHRI RAJEEV CHANDRASEKHAR (KARNATAKA): Sir, let me start by thanking my colleague, Shri P. Rajeeve for bringing this Resolution. This debate about Section 66A of the IT Act was long overdue in the Parliament and I thank you for the same.

Sir, let me start with what I have to say by requoting what Pilania*ji* said - a quote from Voltaire, "I disapprove of what you say, but I will defend to the death your right to say it." That is the essence of our democracy and the essence of what the Constitution promised us in terms of the right to express ourselves. Sir, let us understand clearly what the background to this debate is. Despite being the largest democracy in the world today, India ranks 39 globally in terms of free speech over the Internet and has reported a negative trajectory in terms of Internet freedom over the last few years. The CNN recently ran a programme titled "India a Democracy sans Freedom". It described Section 66A as archaic, draconian and absurd. In March this year, India was added to the list of countries "under surveillance" in the latest Annual Report presented by "Reporters without Borders", an international organisation on

enemies of the Internet. The issue of misuse of Section 66A of the Information Technology Act has been raised at various instances. There is overwhelming evidence that there is misuse and discretionary interpretation, parts of which the hon. Minister admitted earlier today in Parliament in response to a question. We are all aware that a Public Interest Litigation has been filed recently by a petitioner in the Supreme Court and there are fasts and protests by many citizens all over the country. Sir, this is the background against which we are having the discussion today. Sir, as my colleague said, the IT act, really a landmark Act, was unfortunately passed by this House on 23rd December 2008, the last day of the Winter Session of the 14th Lok Sabha in seven minutes flat, without any opportunity for discussion or counterpoints to be offered by the Members of this House. While the argument can be made that the Supreme Court may be inclined to look at the PIL and devise possible procedural solutions, I think, we should not abrogate our duty as parliamentarians. It is incumbent on the Parliament and representatives of the citizens to seek immediate legislative correction where correction is obviously required. The defence by the hon.

Minister that the Parliamentary Committee recommended this, is respectfully I say, facetious because he is aware of the many cases where the Government ignores the Committees and in any event, the issue is of the law and its impact on citizens and its weakness and its implications vis a vis our constitutional guarantee of free speech and not about the interpretations of the Parliamentary Committee. In fact, the learned Attorney General's admission in the court of the potential misuse and the fact that the Government now has to issue guidelines is testimony to the large scale abuse of Section 66A and the rules. Guidelines are not an answer when the content of the law is bad. Issuance of procedural guidelines like raising the level from an Inspector to a DSP or IG, does not remedy fundamental flaws within Section 66A of the IT Act. To say that it is only a law enforcement implementation problem, is mischaracterizing the problem. Of course, there is the issue of abuse by agencies, as recent incidents have shown. The police machinery is not equipped with legal tools to interpret the statutes in online speech cases and cave in to political pressure often. The recent step of raising the level of officers who can invoke a law tells us that officers who have constitutional authority of

making arrests under all other laws may even be misled or misinterpret the law. There can be no better admission of infirmity in the law than this self admission which the hon. Minister had to resort to recently. Further, guidelines also cannot be a substitute to a review of the act, to prevent encroachment of fundamental freedoms. Added to this, the Section itself is bad in law. Hence this Resolution in the House to bring amendments to Section 66A.

Sir, let me lay out my reasoning on why a review of this Act and an amendment is absolutely essential in addition to what my various colleagues have already laid out. Restrictions on free speech, such as under Section 66A must pass the muster of 'reasonableness'. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) and the social control permitted by clause (2) of Article 19. If so, it will be held to be wanting in that quality.

RG/4.10/2X

SHRI RAJEEV CHANDRASEKHAR (contd.): Undefined and overbroad words such as 'grossly offensive' and 'menacing character' are subject to discretionary interpretations and abuse. That is just a fact. This presents a danger to free speech under article 19(1)(a). The danger becomes even more amplified when even law enforcement officers at the district level can impose this restriction and the provision. Reliance on import of provisions from other countries does not assist. The Indian Constitution, as my colleague, Shri Rajeeve has said, is stronger on the guarantee of free speech than the unwritten U.K. Constitution, and the judiciary here has wide powers of judicial review or statutes. The Supreme Court itself has observed in Union of India versus the ADR, and I quote: "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions." The term "grossly offensive" will have to be read in such a heightened manner as not to include merely causing offence. As my colleague, Shri

Rajeeve, has pointed out, the one other place where this phrase is used in Indian law, and it is used only once, is in section 20 (b) of the Indian Post Office Act. The big difference, as he has himself pointed out, is that under section 20 (b) of the IPO Act and section 66A of the IT Act, the former is clearly restricted to one-to-one communication, as is the case of most of the international precedents which the Minister has quoted earlier today, while replying to a Parliament question. Reducing the scope of section 66A to direct communications would make it less prone to abuse. Redundancy in the wake of other statutes in India must also be seen. Criminal statutes have undergone judicial scrutiny and implementation of robust procedures to prevent possible encroachment on the personal freedom. "Annoyance", "inconvenience", "insult", "ill will" and "hatred" are very different from "injury", "danger", and "criminal intimidation". The question arises whether you need a separate provision in the IT Act for that. As my colleague, Shri Bandyopadhyay said, why we cannot use the existing provisions in the IPC or Cr.P.C. to take care of crimes that are already defined under law.

I have again a point of couple of other infirmities in the Act. The purportedly anti-spam provision under clause (c) does not cover spam. It does not have the two core characteristics of spam, that it is unsolicited and that it is sent in bulk. The definitional problems extend to "electronic mail" and "electronic mail message" in the 'explanation' that are vast to cover anything communicated electronically, including forms of communication that aren't aimed at particular recipients the way an e-mail is. Sir, on the procedural front, -- again my colleague has gone into this in detail -- section 66A punishes the same actions in a stricter manner than the treatment and actions under the penal laws in India, namely, the I.P.C. and the Cr.P.C. Further, making it a cognizable offence means a police officer can arrest without a warrant. In combination with the above deficiencies, this exponentially increases the threat to free speech under section 66A. Sir, sometimes section 66A looks like a solution looking for a problem; especially, when the father of a girl receiving a cake from a young gentleman can file a case against the cake-giver under this provision as has happened a few days ago. Considering the potential and the recently demonstrated abuse of

section 66A in contravention of the freedom of speech, it may be worthwhile to explore a judicial review before arrests under section 66A can be made. The UN Special Rappoteur's Report last year on Internet Freedom and Hate speech detailed the tests and procedures for implementing reasonable restrictions on online speech to be applied only in emergency situations for a limited duration. Sir, a free and open internet is important for innovation, connection and economic growth. Therefore, there is a need to review section 66A holistically, keeping in mind the constitutional tenets and international conventions that we are a signatory to. To those in Government who raise national security or law and order as a bogey or a justification, let me quote President Obama. He said, and I quote: "We reject as false the choice between national security and our ideals of democracy". We can meet both these goals if we are determined to do so.

Sir, let me end by saying that there is a clear case for proactive intervention on this issue by the Government. Little progress has been made by the Government to act on these apparent and widely reported abuse issues. There have been proposals, on two

occasions, from the hon. Minister to constitute an Empowered group to discuss all issues on the table and look at alternative formulations.

(Continued by SSS/2Y)

SSS-DS/2Y/4.15

SHRI RAJEEV CHANDRASEKHAR (CONTD.): The Minister made this commitment when the First Open House was held in August this year and then again on Nov. 29th I understand from Press reports that he met representatives from civil society, intermediaries and industry. I attended the Open House in August, and it seems to me at least, Sir, that nothing has been done in the last five months. I would ask this question, Sir: why has the Government allowed some of these issues come to a boiling point? Sir, there should be no ego involved here. Let us frankly accept that there is a problem with the act, its clauses and the rules. I do not propose a specific interpretation of mine for the constitutional guarantee of free speech nor should the Minister expect us to blindly accept his. Let us accept what the hon. Chairman of the Rajya Sabha said this morning. He said that this is an evolving issue. So, Sir, let the law evolve. Let the Government constitute a Drafting Committee immediately with a multi-stakeholder representation,

including civil society, to address these issues head on and arrive at a sustainable, acceptable framework, as was done in the case of RTI and several other statutes earlier, Sir. This is what is expected from a Government that represents a great democracy like our country. So, please do not ask him to withdraw the Resolution. Let us go forward and create a multi-stakeholder way of coming up with a solution and let me end by quoting John Milton, "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties." Thank you, Sir. I support this Resolution.

(Ends)

SHRI M. RAMA JOIS (KARNATAKA): Respected Sir, I rise to speak in favour of Shri Rajeeve's Resolution. I have listened to the speech of Shri Rajeeve in detail. Therefore, I don't want to repeat what he has already spoken. But, by and large, I agree with what he has said, and also what others who supported Shri Rajeeve's Resolution have said. The Fundamental Rights Chapter is sacrosanct. We had the Government of India Act, 1919. Then we had the Government of India Act, 1935, but ultimately the whole soul of our Constitution is the Chapter on Fundamental Rights and Article 19 gives the Freedom of

Speech and Expression. Article 19(1)(a) says, "All citizens shall have the Right to Freedom of Speech and Expression." But no Fundamental Right is absolute. But every Fundamental Right can be restricted, but subject to reasonable restriction. Clause 2 of this says,

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Any law passed, unless it passes the test under Clause (b), it is reasonable and on any one of these grounds it is unconstitutional. What importance is given to Article 19? You take Article 359. Article 359 says, "Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except Articles 20 and 21)" — subsequently it has been added after emergency — "as may be mentioned in the order and all proceedings pending in any

court for the enforcement of the rights so mentioned shall remain suspended..."

(Contd. By NBR/2Z)

-SSS/NBR-MCM/2Z/4.20.

SHRI M. RAMA JOIS (CONTD.): Dr. Ambedkar, who hatched Article 32, was asked, "Which is the most important Article in your opinion?" He pointed out, 'Article 32." Sir, Article 32 provides a Fundamental Right to remedy before the highest court of the country. One need not go to a smaller court. He can straightaway come to the Supreme Court under Article 32 of the Constitution for enforcement of the Fundamental Rights. Suppose, Fundamental Rights are not enforceable, then Article 32 is of no use. That is why he said that Article 32 has fundamental importance and is the heart and soul of the Fundamental Rights Chapter. That right can be suspended under Article 359 only when there is a declaration of emergency. That is the importance given to this Article. Under no other circumstances, remedy under the Fundamental Rights will be suspended.

Now, to put it generally, this law was passed in hurry and we are worrying at leisure! That is what is happening. The amount of criticism that has come against Section 66A, throughout country, itself is an indicative that the legislation has not been passed after due consideration.

I read Section 80. It says, "Power of police officer and other officers to enter, search, etc.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit..." -- I don't know a police officer will know 'about to commit an offence' -- "..any offence under this Act."

Then, where is the Fundamental Right? Article 19(a), though it speaks of 'speech' and 'expression', in the Indian Express case,

Justice Venkataramaiah gave a detailed judgment that there is no freedom of press. If you go by the Constitution, there is no specific Article which deals with Fundamental Right for media or press. Justice Venkataramaiah, in the Indian Express Newspaper case, interpreted that freedom of press is a part of freedom of speech and expression. That is of utmost importance.

And, in this, I would say that it is the life and breadth of our Constitution. You cannot stifle down life and breath. For example, during Emergency, Abu Abraham, drew a cartoon in the Indian Express. In that, the then President of India had been signing the Emergency Declaration before the advice of the Cabinet was tendered to him. The cartoon depicted President in bathroom and signed it by asking, 'Where to sign? Why to sign?' I don't know. If this law was in force at that time, Abu Abraham could have been prosecuted.

Then, I know the cases where somebody said, 'The then President *murdabad.*' And, they were all prosecuted and then they could not go to court, because Article 32 was suspended.

To put it in other words, this is nothing but legislative terrorism. Now-a-days, we are seeing different types of terrorism -- anti-national terrorism, etc. It is nothing but legislative terrorism.

As Daisy said, 'rule of law means, want of arbitrariness.' When the entire Section is arbitrary and confers unreasonable power on the police authorities, there is no rule of law at all.

For example, if a girl takes the boy or boy takes the girl, then, a part of the media say, 'give the name of community of boy and girl.'

(CONTD. BY KGG "3A")

Kgg/3a/4.25

SHRI M. RAMA JOIS (CONTD.): Then that creates problems. There are certain things the Press is doing; unnecessarily they are creating tension. Such things should be controlled, I can understand. But, the wording of section 66A is so wide that one can be booked for doing any action. Everybody pointed about the two innocent girls. What did they say? I agree that Bal Thackeray was a great leader and was highly respected in Bombay and all that; on that day, they commented that the *bandh* should not have been there. The Kerala High Court has declared *bandh* unconstitutional. The Supreme Court's Justice Verma

has confirmed it. Still, some people call *bandh*. I remember, during the Freedom Struggle time, we never used to call a *bandh*, but we used to call a *hartal*. It is only in sympathy of a particular issue that the people would stay indoors. Now, a *bandh* may be, as the girls pointed out, on account of fear and it may not be out of respect. The moment such a statement is made, going and arresting those girls is highly unwarranted. Right now, it is a subject of criticism everywhere.

Therefore, these provisions—sections 66A, 69A read with section 8A—are atrocious. Voltaire says, as inscribed in the British Parliament, "I detest your opinion, but I shall protect your right to say so." That is the essence of democracy. Everyone has the freedom to express his opinion. Another may like it or may not like it.

I also remember a famous statement of Shyama Prasad Mukherjee in this House. Somebody said, "I crush the opposition." Then, Shyama Prasad Mukherjee said in this House, "I shall crush the crushing mentality." Everyone has got the right to express his opinion. But, just because one expresses his opinion, you cannot take action against him. You see the wording of section 66A: "Punishment for sending offensive messages through communication service, etc. --

Any person who sends by means of a computer resource or a communication device (a) any information that is grossly offensive or has menacing character; or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device, (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

That is why I said that this is nothing but legislative terrorism. The intolerance is anti-democratic. In democracy, you must have the mentality of tolerating the opinion of others. Intolerance is fascist. Such an attitude itself is injurious to democracy. Therefore, our Constitution says that it should be within reasonable restrictions. What is a reasonable restriction? Ultimately, it will be decided by the court—the High Court or the Supreme Court. But, there are many cases, like Searchlight Patna's case or M.S.M. Sharma's case. There

are a number of cases where the Supreme Court has spoken on what is reasonable and what is unreasonable. Now-a-days, virtually, this provision is bordering on the Emergency situation.

(Contd. by kls/3b)

KLS/3b-4.30

SHRI M. RAMA JOIS (CONTD): People will be afraid to even express their opinion frankly because they may feel that they may be subjected to punishment under Section 66A. My learned friend, Mr. Kapil Sibal, is a champion of Fundamental Rights, but in his avatar as Law Minister, I don't know what his opinion is. But in the Supreme Court always he has been a champion of Fundamental Rights. I had occasions of hearing him also on many important matters. Therefore, I am sure that he will consider all the arguments which so many people have given. He should consider all these things particularly in the light of the fact that several legislations were passed in 12 minutes. There is absolutely no consideration of the consequences of these legislations. That is why I repeat that legislation is passed in a hurry and we are repenting at leisure. Therefore there is every scope for applying the mind once again and make the provisions under Sections 66A, 69A

and 80 reasonable so as to fall within the framework of clause (2) of article 19 of the Constitution. Here I need not repeat, I would mention only two-three points of Mr. Rajeeve's Resolution. Clause (b) of 66A provides for an imprisonment of up to three years for information that causes annoyance, inconvenience, etc. Offence under Section 66A is cognizable and has made it possible for police to arrest citizens at odd times, for example, the arresting of a 20 year old girl in Mumbai. The Supreme Court has given a broad dimension of article 19 (1) (a) laying down that freedom of speech under article 19 (1) (a) not only guarantees freedom of speech and expression but it also ensures the rights of the citizens to know to receive information, etc. There are tremendous problems in the way of Section 66A of the amended Act. Though inspired by the noble objectives of protecting reputations and preventing misuse of computer network, it has not been able to achieve its goal. It is worse than the remedy, worse than the disease which it sought to remedy. That is my opinion. Therefore, it is better that the matter is reconsidered and these Sections are substituted with reasonable wordings capable of being understood. The wording at present is capable of being misused or abused. The wording must

be such that it is capable of being understood by the enforcing agencies and implemented. Such an amendment is absolutely called for. Therefore, I fully support the Resolution of Mr. Rajeeve. I also support all those who spoke in support of it. Thank you.

(**Ends**)

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Since many speakers have come forward to speak on this important issue, we are not enforcing timing.

श्री नरेन्द्र कुमार कश्यप (उत्तर प्रदेश): उपसभाध्यक्ष महोदय, धन्यवाद, जो आपने मुझे इस महत्वपूर्ण संकल्प पर बोलने का मौका दिया। दुनिया के विकसित और विकासशील देशों में इंटरनेट और कम्प्युटर आज एक जरूरी हिस्सा बन गए हैं। इस बात से भी इंकार नहीं किया जा सकता कि इंटरनेट और कम्प्युटर के बिना हम राजनैतिक क्षेत्र से किसी भी क्षेत्र में जाएं, तो शायद हमें काम करना मुश्किल महसूस होगा। एक जमाना था, जब हम बैंक में एकाउंट खोलने जाया करते थे, तो वहां देखते थे कि बैंक ऑफीसर इतने बड़े-बड़े रजिस्टर मेण्टेन करते थे और हमें बैंक एकाउंट में पैसा जमा करने के लिए या निकालने के लिए घंटों-घंटों लाइन में लगना पड़ता था।

(3सी/एमपी-यूएसवाई पर जारी)

MP-USY/3C/4.35

श्री नरेन्द्र कुमार कश्यप (**क्रमागत**) : रजिस्टरों की उलटा-पलटी में बहुत सारा समय ज़ाया हुआ करता था और वह उपभोक्ता, जिसका काम सिर्फ एक-दो मिनट का होता था, उसे घंटों-घंटों इंतज़ार करना पड़ता था, लेकिन आज कम से कम हमें इस बात की प्रसन्नता है कि आई.टी. के क्षेत्र में हमारे देश ने बहुत बड़ी उपलब्धि हासिल की है, बहुत बड़ी कामयाबी हासिल की है, जिसके ज़रिए आज बहुत सारी अनसुलझी बातें, बहुत सारी जरूरतें हम लोग घर में बैठकर पूरी कर लेते हैं।

महोदय, इंटरनेट और कम्प्यूटर के ज़रिए हम घर बैठे दुनिया और देश की तमाम जानकारियां हासिल करते हैं। मॉडर्न कंट्री में स्कूल-कॉलेज में पढ़ने वाले बच्चे इंटरनेट के ज़रिए अपने किसी भी सब्जेक्ट पर better command करते हैं और इंटरनेट कम्प्यूटर के ज़रिए आज हर मुश्किल आसान नज़र आ रही है। तो हमें कम से कम इससे ज़रूर सहमत होना चाहिए कि इंटरनेट और कम्प्यूटर सिस्टम में हमारा देश जो आगे बढ़ा है, यह और आगे चल सके, इसके लिए पूरे सदन के सदस्यों की सहमति की आवश्यकता है, लेकिन पिछले समय में जो कुछ अप्रत्याशित घटनाएं मुम्बई में हुईं, यक़ीनी तौर से उन घटनाओं को कभी भी नज़रअंदाज़ करके नहीं देखा जाना चाहिए। अगर कुछ लड़कियां या कुछ लोग अपने विचारों की अभिव्यक्ति के लिए फेसबुक का प्रयोग करते हैं और वह प्रयोग किसी प्रकार से कानून के विरुद्ध नहीं है और उनको अरेस्ट किया

जाए या उन पर जमानत के लिए दबाव डाला जाए, अगर इस तरह की घटनाएं देश में होती हैं, तो कहीं न कहीं यह हमारे कम्प्यूटर नेटवर्क और इंटरनेट का उपयोग करने वालों के लिए मुश्किल का क्षण ज़रूर हो सकता है, हालांकि हम इस बात को अभी तक नहीं समझ पाए। जहां तक मुझे याद आता है कि जब बजट सेशन चल रहा था, सरकार CrPC में एक अमेंडमेंट लाई थी। 341(c) के नाम से CrPC में वह अमेंडमेंट हुआ। माननीय कानून मंत्री जी ने उसको प्रस्तुत किया और उस अमेंडमेंट के ज़रिए सरकार ने यह स्पष्टीकरण दिया था कि सात वर्ष या सात वर्ष से कम सज़ा वाले केसेज में पुलिस बिना कोर्ट के वॉरन्ट issue किए किसी भी अभियुक्त को गिरफ्तार नहीं कर सकती है। यह संशोधन इसी राज्य सभा में आया और वह पास हुआ। हालांकि हमने उस संशोधन पर एतराज़ जताया था और हमने इस बात की आशंका व्यक्त की थी कि सात साल दंड वाले केसेज में या उससे कम वाले केसेज में अगर पुलिस बिना वॉरन्ट के गिरफ्तारी करने का अधिकार पा लेती है, तो कहीं न कहीं देश में अव्यवस्था का माहौल पैदा होगा। लेकिन इन लड़कियों की arrest के पीछे कौन सी कानूनी प्रक्रिया अपनाई गई, यह चीज़ अभी तक शायद सदन के संज्ञान में नहीं आई है, इसलिए मैं अपनी पार्टी की ओर से श्री राजीव जी के इस मत का समर्थन करता हूं कि इस आई.टी. एक्ट के दुरुपयोग की किसी भी संभावना को अगर सदन में चर्चा के दौरान निस्तारित कर दिया जाए, निष्प्रभावी कर दिया जाए तो कम से कम इंटरनेट और जो कम्प्यूटर प्रयोग करने वाले लोग हैं, वे एक अनावश्यक बोझ से

निकल सकेंगे, अनावश्यक दबाव से निकल सकेंगे। अलबत्ता कुछ ऐसे अपवाद ज़रूर आज पैदा हो गए हैं, जिन पर विराम लगाया जाना भी चाहिए। हम इस पक्ष में बिल्कुल नहीं हैं कि आई.टी. ऐक्ट को बिल्कुल निष्प्रभावी कर दिया जाए...

(3D/SC-PK पर जारी)

-MP/SC-PK/4.40/3D

श्री नरेन्द्र कुमार कश्यप (क्रमागत) : या आईटी ऐक्ट में दंड के प्रावधान को समाप्त कर दिया जाए या आईटी ऐक्ट का कोई investigation न हो। हम इस पक्ष में हैं कि जो कानूनी प्रक्रिया है, जो कानूनी प्रावधान है, वह अपनी जगह पर काम करे, लेकिन अपवादस्वरूप कुछ चीजें जो आज पैदा हो गयी हैं, उन पर विराम लगाने के लिए कोई माध्यम सरकार अपना सकती है। आज सदन भी उस पर विराम लगाने की आवश्यकता महसूस करता है और देश भी महसूस करता है। महोदय, कई बार जीवन में कठिनाई भरे क्षण देखने को मिलते हैं। आज इंटरनेट के जरिए शादी हो जाती है और इंटरनेट के जरिए ही divorce हो जाता है। इस प्रकार इस हद तक इंटरनेट का दुरुपयोग न हो, इस पर हमें कुछ न कुछ लगाम लगाने की आवश्यकता है। जिस प्रकार से आईटी ऐक्ट के कानून का दुरुपयोग हुआ है, मैं समझता हूं कि उसमें हमारे माननीय सदस्य की जो भावना है और उनका जो सजेशन है, उस पर विचार किया जाना बहुत आवश्यक है। राजीव जी ने जिन चार-पांच बिन्दुओं को खास तौर से अपने संकल्प के तौर पर

उभारने की कोशिश की है, उनमें खास तौर पर 66(क) के संशोधन के संबंध में उन्होंने अपना विचार रखा है। हम उनकी बात से इसलिए सहमत हैं कि कम से कम आज के बाद अगर सरकार और सदन इस पर सकारात्मक रूप से विचार करके संशोधन करता है तो कम से कम बाकी निर्दोष बच्चे-बच्चियों या अन्य व्यक्तियों को अनावश्यक रूप से दंडित होने से बचाया जा सकता है। इसलिए मैं समझता हूं कि आज के हालात में 66(क) में संशोधन किया जाना बहुत उचित नज़र आता है और इस अपराध को असंज्ञेय अपराध बनाया जाए, मैं समझता हूं कि आज के युग में यह उचित प्रतीत होता है। इसके अतिरिक्त दंड के तौर पर जो कम सजा का सजेशन संकल्प के द्वारा उभारा गया है, उससे भी हम सब लोगों को इसलिए सहमत होना चाहिए कि अब हम और हमारा देश इंटरनेट और कम्प्यूटर से अलग नहीं हो सकता। इस सिस्टम को अगर देश में प्रभावी रूप से लागू करना है तो कहीं न कहीं हमें इस कानून में लचीलापन पैदा करना पड़ेगा, ताकि इसका उपयोग करने वाले लोग निःसंकोच होकर इसका उपयोग करें, लाभ उठाएं, देश आगे बढ़े। धन्यवाद।

(समाप्त)

श्री बसावाराज पाटिल (कर्णाटक) : माननीय उपसभाध्यक्ष महोदय, यह जो संकल्प लाया गया है, एक विशिष्ट कारण से मैं इसमें संशोधन करने के लिए सरकार से अपील करता हूं। इसमें इस प्रावधान के होने के कारण कई जगह पुलिस सब-इंस्पेक्टर जाकर ऐक्शन लेते हैं। जब पब्लिक चर्चा का विषय होता है

तो बेचारा पुलिस सब-इंस्पेक्टर सस्पेंड होता है और बाद में उसकी बहाली करनी ही पड़ती है। कानून में इस प्रकार के दोष को नहीं रखना चाहिए, जिसके कारण पुलिस सब-इंस्पेक्टर को या उसका इम्प्लीमेंटेशन करने वाली अथॉरिटी को दुविधा के कारण निर्णय लेना पड़े। इसलिए पुलिस अधिकारी को दुविधा न हो और साथ ही साथ जनता को भी अनावश्यक कष्ट न हो, इसके लिए मैं आपके माध्यम से सरकार से अपील करता हूं कि उसमें क्लीयर instructions हों और उसके अंदर इस प्रकार के प्रावधान का निर्माण करके संशोधन लाया जाए, ताकि भविष्य में इस नियम का, इस क्लॉज़ का कोई दुरुपयोग न हो – न जनता कष्ट में आए और न पुलिस अधिकारी के द्वारा ऐक्शन लेने के बाद लोग उसको गालियां दें। प्रावधान है, इसलिए उन्होंने क्रम लिया है। इसके साथ-साथ मेरा यह भी कहना है कि इस प्रकार की जो प्राइवेट डिस्कशन होती है, वह सार्वजनिक क्यों बनती है? इसको रोकने के लिए भी सरकार को कोई न कोई प्रावधान करना चाहिए। कई बार किसी सेंटिमेंटल घटना के समय अगर यह सार्वजनिक होता है तो किसी अनहोनी घटना का कारण भी बन सकता है। ऐसा न हो, इस दृष्टि से private discussion should be always private, इसका ध्यान रखना चाहिए। साथ ही साथ इसके अंदर आवश्यक संशोधन लाया जाना चाहिए, ताकि इसके बारे में कोई दुविधा न रहे - न जनता को कष्ट हो, न किसी पुलिस अधिकारी को बाद में अनावश्यक समस्याओं का सामना करना पड़े । इस दृष्टि से मैं सरकार से अनुरोध करता हूं कि उनकी जो मांग है, उसे स्वीकार करते हुए,

जो भी छोटा-मोटा आवश्यक correction करना है, उसको करने की कृपा करें, यह मैं आपके माध्यम से सरकार से विनती करता हूं।

(समाप्त)

(3ई-जीएस पर आगे)

-SC-PK/PB/3e/4.45

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Now, Mr. Rama Chandra Khuntia.

SHRI K.N. BALAGOPAL: Sir, just a minute. There is a direction from the Chairman earlier that the time for Private Members' Business will be two hours. We know that in the list, yours is the next name and after that, my name is there. So, it will be good if we also get a chance to introduce our Resolutions. There is a direction. I don't know if the Treasury Benches have something to say. But there is a direction like that.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Actually, what we are just following is, since it is a very important issue, let all the Members who want to express their views, let them express it. ...(Interruptions)...

SHRI T.K. RANGARAJAN: You do it every time. Yesterday, when I was speaking on the Constitution Amendment Bill, you intervened and you wanted to stop me. ...(Interruptions)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): At that time, time was enforced, but now we are not enforcing the time. ...(Interruptions)... I told you earlier itself. ...(Interruptions)...

SHRI M.P. ACHUTHAN: Sir, will it be possible for us to conclude this discussion today?

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Let the hon. Members speak and then we will see.

SHRI RAMA CHANDRA KHUNTIA (ODISHA): Sir, this Resolution which has been brought out by the hon. Member, Shri P. Rajeeve, is good in spirit that all citizens of this country must have the right to speak, and the right which is enshrined in our Constitution should be enjoyed by all and there should not be any other law which will prevent the citizens from enjoying the rights which have been given to them by our Constitution.

However, Sir, I do not fully agree with the text of the Resolution given by the Mover. But I do agree that there are some cases of

misuse of this right like it happened in Maharashtra where two girls were arrested. Then, there was the case of a University in Bengal where a Professor was arrested. At the same time, there are some incidents in Kokrajhar and other places where there has been misuse of this Section.

Even today morning also, in reply to a question, the hon. Minister has clearly said that Section 66A was provided in the Information Technology Act, 2000 based on the international best practices and similar provisions of the Communication Acts of a number of countries. Sir, actually, when this Act was amended and this Section was included, it was done keeping in view the international laws and practices because the Internet is connecting the whole world. So, we also have to seek the views and cooperation of the international community while enacting it, and they have taken that into consideration. The Bill was referred to the Standing Committee. Now, it has been said that while enacting the legislation, they have not taken into consideration the recommendations of the Standing Committee. But I want to inform the House that when the law was in the public domain, as it was under the consideration of the Standing

Committee, there was a discussion in the Standing Committee on this in which Members of the Opposition parties like BJP, etc., were also present. They were also there in that Standing Committee.

(Contd. by 3f/SKC)

SKC/3F/4.50

SHRI RAMA CHANDRA KHUNTIA (CONTD.): In respect of the offence, whether it is to be cognizable or not, the Standing Committee has clearly said, and I quote, "The various amendments/ proposals seek to tone down the quantum of the punishment or various types of cyber crimes, expressing their serious reservation on the Central Bureau of Investigation, and some industry representatives have maintained that in view of the gravity of the offence under all the above-cited sections, it should be made cognizable. On the other hand, the Department of Information Technology has stated that these punishments are proposed to be rationalized because while penal provisions do not give occasion of harassment to legitimate users , the common man is ignorant of the nuances of information technology. In a nutshell, the Department contends that in that sense people are

getting bail easily and so we propose to keep it above the said Section..."

So, it is not that it has not been discussed. It has been discussed in the Standing Committee, and the legislation was discussed and passed in the Parliament. The comment made was that if it was passed in the Parliament within seven minutes, it was not because of the Treasury Benches or the Government; sometimes the Opposition do not allow discussions on the Bill in detail and do not allow others to speak. That is not right. You must not disallow others from speaking or taking more time. Now, in a Private Members' Bill, the Treasury Benches, the Government and everybody else is cooperating and discussing it for more than two hours. Hon. Member here was saying that it should be confined to two hours but we are not opposed to discussing it for even more than two hours because it is an important Bill. So, on the one hand, they would not allow to run the House systematically and allow the Member to speak, and on the other hand, they criticize the Treasury Benches saying that they are passing the Bill in seven minutes. That is not correct. I think we

should all be responsible and help discuss the Bill in detail whenever any Bill comes up for discussion.

Sir, coming to the details, I wish to make one point about the immediate amendment and legislation. Some people say that it is not constitutional. Now, this case is pending in the Supreme Court and we are nobody to say whether it is constitutional or not, because we have the separation of powers. Some powers are vested with the States, some with the Central Government, and sometimes the question whether something is constitutionally right or wrong is defined and decided by the hon. Supreme Court and we legislate accordingly. So, this matter is also now pending with the Supreme Court and I think the Government is also in consultation with all the stakeholders, the corporate houses, the legal experts, and so on to arrive at a decision. That is in the process.

Sir, coming to the appeal that Shri Rajeeve made, about amendment to Section 66A of the IT Act, 2000 in line with the Fundamental Rights guaranteed under the Constitution of India, it is very clear, and even the hon. Minister has said so, that it is in line with the rights guaranteed under the Constitution. Talking about

restrictions on the application of Section 66A of the Act, communication between two people has been mentioned. Now, when you say communication between two persons, who are the two persons? Of the two persons, one may belong to India and the other to China; one may belong to India and the other to Pakistan; one may belong to India and the other to the United States of America. Also, that may be detrimental to the interests of our country. When you say two persons, how do you define 'two persons'? I think while saying that it is for two persons, it is objectionable and it is not the correct thing. Also, when it is between two persons, the other person may not like it. Say, I send some communication to anybody, say Mr. Rajeeve, and he does not like it. When you say the communication between two persons is objectionable, I think it is not correct.

(contd. by hk/3g)

HK/4.55/3g

SHRI RAMA CHANDRA KHUNTIA (**CONTD.**): Communication between two persons can also be understood with a different meaning. This Resolution seeks to 'precisely define the offence covered by Section 66A of the Act; reduce the penalty imposed by

Section 66A of the Act." As I have already said, this thing has been done as per the recommendation of the Standing Committee. I would like to draw the attention of the House to one thing. There is nothing wrong with the legislation. Only proper implementation is required by the person who is responsible for implementing this. Sir, our country, India, is very much known for legislating progressive laws, whether it is labour law or criminal law or any other law. We are very much known for the progressive legislation. But we have a very bad name for non-implementation because we do not implement it correctly. So, non-implementation does not depend upon the legislation; it depends upon the executive power of the executive who is responsible to execute it. From the political point of view, if something happens in West Bengal, we blame the West Bengal Government and its Chief Minister, and if something happens in Maharashtra, we blame the Chief Minister of Maharashtra. But what action do we take against the person who is implementing and misusing the Act. The person who is misusing the Act is the implementing authority. Without prejudice to any individual, I can say this. There are many big civil servants and officers who are working in this country for years

together, but there are many pilot schemes which are not being implemented. They are also accused of non-implementation. But the moment they leave that post and come to the public field and Parliament, elected or nominated by party or people, they are the first person who blame that nothing is happening in this country. Then what had they been doing for forty years when they were at the top of the job? When they were at the top of the job, they didn't do anything. But when they come to this House, they say that nothing has been happening in this country, nobody is doing anything, administration is collapsed and it is doing nothing. Who is responsible for that? Whether it is Lok Sabha or Rajya Sabha, I can say with pride that our legislation is the best legislation in the country. There may be some lacunae. Law is an evolution process. If it is misused, it can be rectified and amended. Law is always in a developing process. When a law is implemented, its lacuna is identified and amended. If it comes in the jurisdiction of the court, the court decides whether it is constitutional or non-constitutional and if it requires any amendment, it is amended. But the question remains is who is responsible for implementing the law or pilot schemes. It is not the Member of

Parliament of any party. The person who is in charge of implementation is not implementing it. But when the first chance comes, he tries to blame the system. That is why I say that it is not important to bring in the amendment. We have already brought so many legislations in our country. Are we taking the officers to task who are misusing the Act in Kokrajhar, West Bengal and Maharashtra? If the answer is 'No', why do we blame each other politically? If it happens in West Bengal, we blame the TMC; if it happens in Maharashtra, we blame the Congress. Who is misusing the Act? There may be a political leader who is giving directions verbally; I don't know. Nothing will happen in this country unless and until we have the guts to punish the person who is misusing the Act in this country. So, more important is the proper implementation of the Act. ...(Interruptions)...

SHRI P. RAJEEVE: Sir, we are coming near to five of the clock. What would be the fate of this Resolution? Would it be continued in the next session or not?

(Followed by 3h/SK)

-HK/SK/3H/5.00

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Let him complete first. It will be over at 5.03 p.m. ..(Interruptions)..

SHRI P. RAJEEVE: Sir, my question is a very relevant question. It is a very important issue. I am ready to conclude it today itself. I will not take more time. I am ready to avoid the reply. My query is, will it continue or not? ..(Interruptions)..

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Let him complete it.

SHRI P. RAJEEVE: I want a ruling from you. After five o'clock, will it continue or not?

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): It will be over at 5.03 p.m.

SHRI P. RAJEEVE: Will it continue in the next session?

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): It will finish at 5.03 p.m. You raise the issue at that time.

SHRI P. RAJEEVE: It is a specific query. I need an order from you.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): We will get the sense of the House and then we will decide it.

SHRI P. RAJEEVE: Then, let us take the sense of the House.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): We will do that at 5.03 p.m.

SHRI P. RAJEEVE: There are precedents, Sir. In the Telangana Resolution, it was continued in the next session without taking the sense of the House. ..(Interruptions).. Otherwise, we will put into vote now to take the sense of the House.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Yes, Mr. Khuntia, please continue.

SHRI RAMA CHANDRA KHUNTIA: Sir, in that case ..(Interruptions)..

SHRI P. RAJEEVE: Sir, then, I request the House and also the Chair that since it is an important issue, sense of the House may be taken that it will be continued in the next session also.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Okay, let it be over at 5.03 p.m. Then, we will take the sense of the House. ..(Interruptions).. Why do you take the hon. Member's time? You made your request. We will look into that.

SHRI RAMA CHANDRA KHUNTIA: Sir, even today, while giving the reply, the Minister has said in part 'c', "the Government has held discussion with the stakeholders, including the industry, associations, intermediaries and end-users to address the issue of proper implementation of the provisions of this Act. It has agreed to provide necessary guidelines to prevent misinterpretation of the provisions of this Act and to minimize the unintended consequences". I think, Sir, the Government is also very open in their mind, as the Minister has already said. I think, he might have made a mention to it because there was a dispute regarding the corporate house information. The Government probably is also open in their mind in this regard and is discussing with all other partners. (Ends)

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Wait a minute please. Since the mover of the Resolution has made a request for further continuing it, I would like to get the sense of the House to continue.

SOME HON. MEMBERS: Yes, Sir.

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI KAPIL SIBAL): With your permission, if I may

intervene, I am not responding yet to any of the issues, ..(Interruptions).. What you have raised is an important issue. This country stands for freedom of expression. There is no question of diluting the fundamental right of free speech, and we, in this Government, do not believe, in any way, in emasculating that right. You believe that the Act itself is unconstitutional. We can have two ways out. The matter is pending in the Supreme Court.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Mr. Minister, we can continue it.

SHRI KAPIL SIBAL: My suggestion is that, so that this matter can be ..(Interruptions)..

SHRI T.K. RANGARAJAN: This can be misused by any future Government.

SHRI KAPIL SIBAL: Please, if you don't mind, I am not responding to the minutes. I am just giving the suggestion.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Hon. Minister, the time for Private Members' Resolutions is over. Now, do you want to conclude it or do you want to continue it?

SHRI RAMA CHANDRA KHUNTIA: No, no, I want to continue.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Okay, the sense of the House is to continue it. We will continue it in the next sitting of the Private Members' Resolutions day.

The House stands adjourned to meet at 11.00 a.m. on Monday, the 17th December, 2012.

THE VICE-CHAIRMAN (DR. E. M. SUDARSANA NATCHIAPPAN) in the Chair.

THE VICE-CHAIRMAN (DR. E. M. SUDARSANA NATCHIAPPAN): The discussion on the Resolution moved by Shri P. Rajeeve on 14th December, 2012 was over. Now, the Minister, Shri Kapil Sibal, to make his intervention.

PRIVATE MEMBERS' BUSINESS (RESOLUTIONS)

RESOLUTION RE. NEED TO AMEND SECTION 66A OF INFORMATION TECHNOLOGY ACT, 2000 – (CONTD.)

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI KAPIL SIBAL): First of all, I congratulate Rajeeveji for having moved this Resolution. The reason for me to congratulate is that this is a matter which is of great concern to all of us. Democratic institutions must ensure that the citizens' right to free

speech should not be diluted in any way. And, certainly, systems of Government should not be used for negatively impacting that right. And the fact that Rajeeveji has raised this issue in the context of the new medium through which conversations in the world take place, it has thrown up issues that democracy has not been confronted with before. The resolution of many of these issues is not easy because of the nature of the medium. So, the reason why Rajeeveji deserves congratulation is that he is the one who has raised these issues. He is the one who has put them in the public domain and, I think, the wisdom, of not just this institution but other institutions where the matter is pending, will certainly guide us as to what we should be doing in the future. Our laws must be consistent with the right to free speech. Nothing should be done in our laws which negatively impacts that right, subject, of course, to the limitations set out in the Constitution itself.

I am also grateful to the distinguished hon. Members of this House who have participated in this debate – Pilaniaji, Naik sa'ab, Bandyopadhyayji, Paridaji, Chandersekharji, Rama Joisji, Narendra

Kumar Kashyap sa'ab, Basawaraj Patil sa'ab, Khuntiaji. They have all contributed enormously to this debate and I am grateful to them for it.

(CONTD. BY 2K/KGG)

KGG/2K/2.35

SHRI KAPIL SIBAL (**contd.**): This Resolution seeks four things and I will just read them out: (a) amend Section 66A of the I.T. Act, 2000, in line with the fundamental rights guaranteed under the Constitution of India; (b) restrict the application of Section 66A of the Act to the communication between two persons; (c) precisely define the offence covered by Section 66A of the Act; (d) reduce the penalty imposed by Section 66A of the Act and make the offence under Section 66A of the Act a non-cognizable one. Each of these concerns are genuine concerns.

Sir, before I seek to address some of these issues that my good friends have raised, I wish to place before you what I think is the essential difference between the print media and the social media. Sir, in the print media, the identity of the person is always known—the correspondent who writes the piece is always known. If it is the Express News Service, or the Times of India News Service, or some

other news service, they are under the Press Registration Act; we know who the publisher is, we know who the editor is, we know who the resident editor is. So, obviously, therefore, we can identify not just the publication but also the individual. Therefore, the liability can be easily fixed. But, this is not so in the social media. Most of the time, the social media is opaque. We do not know the identity of the person because under the rules of the social media, the person concerned need not reveal his or her identity. The social media has trans-border implications. The carrier, the intermediary, is not liable to the jurisdiction of courts unlike in the print media. If we wish to know the name and the identity of the person who is sending the message, we need to rely upon the intermediary and the intermediary is not obligated under any law to disclose that name. There are no international rules under which those names need to be disclosed. If the person is outside the jurisdiction of the court, which court has the jurisdiction, how that jurisdiction would be exercised? There are no rules for that.

So, I request my distinguished colleagues in the House to appreciate this very clear distinction between what is printed, what is

set out in newspapers and publications in cold print as against information that is available on the net. Were the civil society and the Governments around the world confronted with this social phenomenon of the social media? No, this is a recent phenomenon and Governments all over the world and citizens all over the world are actually grappling not knowing exactly how to deal with it. We too, here, are yet to discover the contours of responsibility of those who put information on the net and the extent of responsibility that must be foisted on those who actually put that information on the net. Where do you draw the line? Are norms of civil society to be applied to the social media? For example, if somebody comes to you face-to-face and abuses you in the filthiest of terms, well, you can take him to court. You know his identity. There will be witnesses around who have seen this, who have heard this. Even if that is not so, you can actually move the court. But, if you get the same abuse on the net, can you do something about it? The answer is, 'no'. But, the norms of civil society that is applicable to us face-to-face, should we apply those to the social media? These are very fundamental philosophical issues that need to be addressed by all of us.(CONTINUED BY TDB/2L)

TDB-DS/2L/2.40

SHRI KAPIL SIBAL (CONTD.): What are civil society norms with which we wish to live together with each other? There are many things that are posted on the sites, and I have myself witnessed them, which you and I, talking to each other, cannot ever conceive to deal with each other in that manner. And yet, we tolerate that on the Net. Is that acceptable as a civil norm? I don't know. I think time will tell. Can you, for example, comment on somebody's physique on the Net? He may be differently-abled. And make fun of him! If you were to do that in the real world, there will be an outcry. You will be taken to court. But if you do that in the cyber world, there is no way to deal with that issue. You will not have access, and if you were to block that site, people might talk of freedom of expression. So, I think, somewhere down the road, we have yet to discover the norms of civil society that must be applied to cyber space as distinguished from norms that are applied in the real world. I think we need to address that issue; we need to deal with that issue before we come to any conclusion. All civil intercourse must be subject to the constitutional prescriptions; there can be no doubt. Nobody can say that the social media is outside the

Constitution. Nobody will accept that. But the limits of exercise of freedom of expression in the social media are yet to be prescribed. They can't be constitutionally prescribed because when the Constitution was framed, there was no social media. There was only the print media. So, how do we deal with this new phenomenon? It is subject to prescriptions; it is subject to restrictions; it is subject to defamation, it is subject to decency, it is subject to morality; it is subject to public order. But what are the norms of decency under Article 19(2) of the Constitution which should be applied to the social media as distinguished from norms of decency that are to be applied in our intercourse in the real world? Are those norms different or are those norms the same? I tell you why these norms may not be the same, and why we have to apply different principles. The print media gets extinguished. You read the newspaper the next day, and it is over. The social media is a continuing process. You will have that byte on the site for months. In a sense, it is a continuing offence, not so in the print media. It has a life of its own, not so in the print media. So, should the same norm be applied to the social media as we do in the real world? People forget about what was said in a newspaper

yesterday or the day-before-yesterday, but people are reminded of what is said on the social media on a daily basis because it is there, it cannot be effaced. And, supposing, a young girl is living in a neighbourhood; somebody goes on the Net, without disclosing his name, anonymously, says something about a particular part of her body. Should that not annoy that young girl? Are we so insensitive that we say that this is part of freedom of expression? You say, the word 'annoyance' is not there in Article 19; it may not be there. But it is a real problem in the context of the social media in the real world today. And, remember, India will be interacting with each other in the cyber space in the years to come.

(Contd. by 2m-kls)

KLS/2M-2.45

SHRI KAPIL SIBAL (CONTD): Once the fibre optics are laid, communication will be through cyberspace and the cyberspace will be used for the good of India and will be used by many to destroy India, it will be used to maintain public order, it will also be used to destroy public order. This is a new phenomenon and my request to my distinguished colleague is that let us not start deciding and having a

firm opinion on any of these issues, let's await the wisdom of several institutions, including the Supreme Court which is today dealing with this matter. All these issues are before the Supreme Court of India. All the material, all the arguments will be made before the Supreme Court of India. Let them advise us through a full-fledged argument and tell us as to which is the road forward. We will be very happy to follow that road. If despite what the Supreme Court says we think that there is something that needs to be done by us, we will do it. We have no problems with that provided we develop a consensus. I sometimes wonder why Parliament is in a semicircle or round. It is because we hear everybody, their words resound in our ears. But the path forward for the nation is always straight. It is never roundabout. Our discussions are roundabout but the path is always straight. I want these discussions to take place and then we must choose a clear path forward so that we are completely convinced of what we are about to do or are going to do. So, we do not have, I think, to amend the present Section 66A. It is a subject matter of determination by the court. The contours of 66A, I do not want to repeat all that is already known to the distinguished Members of this

House that many of the phrases used in Section 66A have been done after an Expert Committee was set up way back in 2005. It was at that time, I think, chaired by Mr. Ajit Balakrishnan of rediff.com. When the Report of the Expert Committee came, they advised us to formulate the legislation. Thereafter, the matter went to the Standing Committee. My good friend, Mr. Rajeev, was a Member of the Standing Committee. ...(Interruptions)... I am talking of Mr. Rajeev Chandrasekhar. ...(Interruptions)... Mr. P. Rajeeve could never have recommended what the Standing Committee recommended. In fact, we in Government at that time, and I do not want to read that also, said that let this be a non-cognizable offence. The Standing Committee insisted that it should be made a cognizable offence. We said that it should be bailable but the Standing Committee said, no. We did not agree. We made it a cognizable offence in line with the recommendations of the Standing Committee. So, I think all those in the Standing Committee had wisdom to offer to us and we certainly did take into account that wisdom and proceeded accordingly. Therefore, in 2008 the legislation was passed. Then you say that restrict the application of 66A to communication between two

persons. You say that because the English law says that there is a communication between one person and another, you assume that because of that 'one person and another' it is between two persons. That is not correct. The English law does not say that communication between two persons, it says between one person and another. 'Another' can be anybody in the world because you are communicating. When you are communicating on the net, you are communicating with the world, with everybody around the world who has access to that particular site, whether it is Facebook or Twitter or anything else. So, you are communicating with the world. How is that communication between two persons subject to the English Act, but a communication in the rest of the world is not? It cannot be. If it is so, then I disagree with the English legislation. We are plenary, our powers are plenary. We are a sovereign nation; we do not have to agree with what some other statute says.

(Contd by 2N/USY)

USY/2N/2.50

SHRI KAPIL SIBAL (CONTD.): But I don't agree with distinguished Member, Shri P. Rajeeve, when he says that the English statute talks

about communications between two persons. When you say precisely define the offences covered by Section 66(a), how can you define the offences? How do you define the offences? I said the other day that Article 19(2) uses the phrase 'decency', I want to know how you define 'decency', forget about this Act. How do you define 'decency' in Article 19(2) of the Constitution. You cannot define it. What is decent to you may not be decent to me. You may find something that I have written abusive, but I may think that it is perfectly right, it represents my views of the subject, which you might consider abusive. You cannot define the terms, like, 'decency' or 'morality', which is also a term used in 19(2). What is the distinction between 'morality' and 'decency'? Is 'decency' something short of 'morality'? It has to be because they are two different expressions. In other words, something may not be immoral, but it may yet be indecent. And, the other way around, something may be indecent, but may not be immoral. What's that difference? Can you define it? You cannot. Rama Jois*ji* knows it. Sometimes he, as a Judge, might have also find it difficult to define things. We will have willy-nilly to evolve response to this newly-found phenomenon as we go along.

And, I dare say that in times to come, as we face the challenges of the new media, we will have to contemporariously respond to this wonderful phenomenon. And, this is very important. So, please don't ask us to define things that cannot be defined. What annoys you may not annoy me. But, ultimately, who will decide that. The court of law. What is indecent to me may not be indecent to you, but who will define that. Ultimately, a court of law. We have, I think, the maximum litigation, in this country on the Constitutional side, on the interpretation of the word 'equality'. I think, nobody has been able to define precisely what 'equality' is. What do you mean by 'equality'? Nobody has been able to define what 'liberty' is. The concept of 'liberty' has actually changed over the time.

SHRI M. RAMA JOIS: Commonsense can define.

SHRI KAPIL SIBAL: This is something which some of us don't have. This is not a commodity that is freely available with everybody. You are right, Sir, I agree with you. First, there must be a sense, then, it must be common. It is very difficult to say what that 'commonsense' is because, then, you have to evolve societal standards. You look at pornography. People, around the world, are now evolving societal

standards of pornography. In one part of the United States of America, something may be deemed to be pornography, but in other part it may not be deemed pornographic because civil society has different standards there. So, we need to evolve standards of what amounts to annoying somebody. You keep on showing somebody's face as Hitler day-in-and-day-out. I am just giving an example. It will annoy him. Should he sit back and say, "No, it's okay"? I don't know the answer. You may paint somebody's face as a criminal, non-criminal and non-mafia don. And, if you wear dark glasses, you may actually show his face wearing the dark glasses of that mafia don and sort of tie him up. Will it not annoy somebody? It will. Is it okay? I don't know. The contours have not been set out. When you say reduce the penalty imposed by Section 66(a), actually the penalty under 66(a) is only 'if, upon conviction, you get a term of maximum of three years with fine'.

(Contd. by 2o – PK)

-USY/PK/2O/2.55

SHRI KAPIL SIBAL (CONTD.): So, the sentence may be of one day. There is no minimum sentence. There is no minimum sentence unlike

some other criminal statutes. So, in a sense, you can get away with one-day sentence. That will only happen once there is an adjudication. Sir, there cannot be any punishment without adjudication. If a court of law decides in a given case that, yes, you have crossed the boundaries of decency and what you have put on the Net is malicious, clearly offensive, motivated; then, I think you should suffer the punishment. Because it is the decision of a court of law; it is not a prescription of the Executive. Now, you may say, "no, no; it is time for us to reduce the three year's sentence to two years." I am not against it. We can reduce it. There is no issue on that. But the question is, so far, nobody has been convicted even for three years, or, for ten days. So, when we find that there is a situation in which convictions are happening in a mechanical manner, where people have been convicted for three years without cause and courts are upholding it, maybe, we will amend it. We are open to it. But, so far, there is no instance of that. Then, you say, "make the offence under 66A of the Act a non-cognizable offence." Again, I am open to it. There is no issue on that. It is something that we can further debate. What is the advantage of making it non-cognizable? What

will be the impact of making it non-cognizable on civil society? I think, we need to have some studies on it. We also need the wise opinion of the Supreme Court. So, I think, without really going into the details of all the opinion of the distinguished Members of this House, my request to Rajeeveji is to allow the court to fully understand the ambit and the implications of this law. Let us get the wisdom of the court. After that, we can discuss it. I intend to have another Round Table. In that Round Table, I will request Rajeeveji, Chandrasekharji and many others who are also interested to come. We will place the decision of the court in the Round Table. Whatever evolves, if there is a consensus that evolves, we will accept it. With these few submissions, I request Rajeeveji to withdraw the Resolution and allow the process of law to move.

(Ends)

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Now, the mover of the Resolution can reply.

SHRI P. RAJEEVE (KERALA): Sir, I would like to express my gratitude to the Minister for taking this issue very seriously. But, at the beginning, he himself stated that this is a very genuine cause and

the issues raised by me and my colleagues are very genuine and they should be addressed. But, Sir, I have raised very serious issues and, specifically, raised two, three points with regard to the reasonable restrictions and comparison with IPC. ...(Interruptions).. Now, the hon. Minister has given an assurance. There will be a Round Table. All, myself and Shri Rajeev Chandrasekhar, are invited for that Round Table. That is a very acceptable proposal. But, I have an experience. While moving this Resolution, I have already mentioned about this. I got the privilege to move the first Annulment Motion in the history of Parliament with regard to the Intermediary Guidelines Rules. While giving the reply, the Minister gave an assurance that consultation should be done and a consensus should be reached, then, the Minister would come back to the House. Whatever consensus has been reached, it should be incorporated into the guidelines. I think it was in May, 2012. Now, we are nearing May, 2013. More than ten months have already passed. I spoke to the Minister personally. I got an invitation within a very short period.

(Contd. by PB/2P)

PB-NB/2p/3.00

SHRI P. RAJEEVE (CONTD.): But I was not in a position to attend that meeting initially, and I also submitted a letter to the Minister that I am not in a position to attend it. I had some personal matters to attend. I told that I should be heard later. But, up till now, I have not got any letter from your Ministry to give my opinions with regard to Intermediary Guidelines. Then, my request is, all these things should be done in a time-bound manner. Now, we are waiting for one year for Intermediary Guidelines Rules. That was a Statutory Resolution. Now, I have moved a Private Member Resolution, and the Minister has given another assurance of a Round Table Consultation, and he said that whatever consensus reached there would be incorporated. But my request is that it should be done in a time-bound manner.

Sir, the Minister has made a distinction between print media, vision media and new media. That is true because this globalization period has changed the definition of media -- print media, vision media and new media. Not only the definition has changed but the structure or the content of the media has also been changed in this globalization period. I would like to quote Fidel Castro here.

Globalization is the consequence of the development of productive forces, which means the development of science and technology.' I think, you are well aware of him. Then, this technology has been used by media. Recently, the World Bank in its Report mentioned 'mobile', the biggest mission in the world. We can read the print media in mobile itself. Then, how can you distinguish this? You can read the newspapers here. Jairamji is very techno-savvy. He is reading all newspapers in his mobile. We can read a newspaper in an I-pad. We can hear FM Radio in our mobile. We can watch a channel in our mobile. We can read the social media in the mobile itself. Then how can you distinguish the function of mobile while dealing with new media, while dealing with print media, while dealing with electronic media and while dealing with other media? How can you distinguish this? I am a lawyer; but I am not a practicing lawyer. You are a very distinguished lawyer.

SHRI KAPIL SIBAL: Now I am also not practicing.

SHRI P. RAJEEVE: But you have a very rich experience and history as a lawyer. You have mentioned that in new media, the 'identity' is a question. In print media, you can identify the person. My humble

submission is, how do you constitute an offence? It either depends on the identity of the person or depends on the nature of the offence. Suppose a person without identity has committed an offence and a person who has an identity -- you can know him face-to-face — has also committed an offence. How can you distinguish them? You said that in this new media, the person is not identified. In print media, you can identify the person. Then, why have you made an addition to the crimes with regard to social media, print media and electronic media? That is my question. What is the basis of that? I am not satisfied with your reply. Actually, it is diverting the issue. You are right in saying that there is an unidentified person. Anybody can use this media after a request. But, at the same time, this media gave an opportunity to develop or widen the democratic intervention of every citizen in our country, not only in our country but also in the world. Everybody has the right to participate in a democratic process. Then, how should a mature democracy deal with these types of things? That is the issue I had raised at the time of moving the Motion. Now, after the Minister's reply, I have the same question: How can you add more things

with regard to new media? I had raised a very serious issue with regard to Article 19(2), the reasonable restrictions.

(Contd. by 2q/SKC)

SKC-MP/2Q/3.05

SHRI P. RAJEEVE (CONTD.): Sir, the hon. Minister has rightly said that it is difficult to define certain phrases and words. That may be true, but why are they trying to add more abstract terms here? You are aware of certain terms in the Constitution that have already been taken up and thoroughly debated by our Constitution-makers. You are well aware that the Constituent Assembly had spent many days discussing articles 19(1) and 19(2) -- 'reasonable restrictions', and after serious deliberations our Constitution-makers have formulated these terms. The Apex Court has given its interpretation on article 19(2) several times. I would not like to give details, but it is well known to all as to how these reasonable restrictions have been implemented. Article 19(2) clearly defines what 'reasonable restrictions' are. It is true that we would find it difficult to define certain phrases in article 19(2), but that has been done by the Constitution-makers and it has been done by the Apex Court while

interpreting it in different cases. It is already there. Then, why are you adding new abstract phrases only for the new media, or imposing restrictions on article 19(1)—'right to freedom on speech and expression'? Why are you adding terms like 'inconvenience to' here? My request is, there should be some restriction. As I have stated in the beginning, I an not against any regulation but I am totally against control. In 'control' there is no freedom but in 'regulation' there is freedom. So, while there should be some reasonable restrictions, they should be in accordance with article 19(2) of the Constitution. The restrictions given in article 19(2) are sufficient. I have the right to draw a cartoon in a newspaper but I have no right to draw, to paste, to share, the same cartoon in a new media! What is the logic behind that? What is the reason for that? I can write a piece in the print media, I can make a statement in the visual media but I have no right to do the same in the new or the developing media! What is the basis for that? What is the logic behind that? That is the main question. I hope, the Minister would address the issue and tell us why he has made a distinction between the new media, the print media and the visual media for the same offences? This is a very serious issue.

Sir, the same issues have been addressed in the IPC, but the punishment prescribed there is different. What is the basis for that? There are provisions such as 'grossly offensive' in Section 20 of the Indian Postal Act, 'annoyance' -- 268 of IPC, 'danger' – 268 of IPC, 'obstruction' – 283 and 268 of IPC, 'insult' – 295A and504 of IPC, 'injury' – 44 and 268 of IPC. All these provisions are there in the IPC, and the punishment prescribed there is less than what is given here. What is the logic behind that? This is totally unjust. If I do a grossly offensive thing, I would get a punishment of two years under the IPC. When I do the same thing using a computer, the computer has no power to do something additional; it cannot do anything! The computer does only what we command it to do. Then, why this additional one year's punishment for the same crime while using the computer? It is a very genuine question that I have raised. Talking of 'obstruction' or 'insult', if I do that in the public, I would get only a two-year punishment, but if I use the computer, the punishment that I get would be higher than this! What is the basis for this difference? What is the additional role played by a computer in a crime?

(CONTD. BY HK/2R)

HK-SC/2r/3.10

SHRI P. RAJEEVE (CONTD.): The crime is done by the same person, using computer or not using computer. It should be examined; it should be rectified. It should be in accordance with the IPC. ...(Interruptions)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): For this particular Resolution, the time has already exceeded. ...(Interruptions)... Try to conclude it. Other Resolutions are also there. ...(Interruptions)...

SHRI P. RAJEEVE: While moving the Resolution, I mentioned that the Minister gave a direction like 'under the control of Commissioner or Superintendent of Police.' In that discussion, I have raised a very serious issue, that is, the guideline goes beyond the Act. I have also mentioned Sections 78 and 80 of the IT Act. I think the Minister is well aware. If you go through Section 78, it says that Inspector can do anything. Today morning, when I was again going through this Act, I was shocked because earlier this Act gave the power to DSP. Thereafter, the Act had been amended by the Parliament and the DSP rank had been reduced to Inspector. ...(Interruptions)...

SHRI KAPIL SIBAL: Read Section 83. It will give you the answer. I don't want to go into all this because we have agreed that let us wait for the judgment to come. You had agreed and, therefore, I didn't want to go into the details. Answer to your question is Section 83. Please read it.

SHRI P. RAJEEVE: In each and every Act, this section is there. ...(Interruptions)...

SHRI KAPIL SIBAL: Under Section 83, the Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or any rule regulation or order made thereunder. So, we can say that if you want to exercise this power under the IT Act, it should not be exercised by DSP; it should be exercised at the level of the IG, and the States have accepted it. If you say that it is unconstitutional, you challenge it in a court of law. This is not the forum in which I have to withdraw it. I don't understand.

SHRI P. RAJEEVE: I think you are totally mistaken. The Central Government has the full power to give directions, but in accordance with, and in the frame line of the Act passed by the Parliament. The

Central Government has no power to go beyond the provisions of this Act. That is my knowledge. I think that is the general thing. The Central Government has no power to go beyond the provisions of this Act. Then what is the relevance of this Parliament? The Parliament is supreme. This Act itself stated that it is 'Inspector', and if you say that it is 'DSP', then the Act is to be amended. If the Minister's claim is right, then why was the Act amended to change it from 'DSP' to 'Inspector'? What is the need of that? The Government gave an assurance that...(Interruptions)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Mr. Rajeeve, please conclude. ...(Interruptions)...

SHRI P. RAJEEVE: Sir, I am raising a very serious issue. That is my right. ...(Interruptions)... I have the right to present this issue. I have the right to reply. ...(Interruptions)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): The thing is that we have exceeded the time allotted for this Resolution. ...(Interruptions)...

SHRI P. RAJEEVE: Sir, actually, I have raised this issue in December in this House. How can the Executive dare to make an order on

January 9 when it is under the process of this House? How can the Executive do it?

SHRI M. VENKAIAH NAIDU: Can you repeat it?

SHRI P. RAJEEVE: Actually, I have raised this issue in December. The Minister stated in media that there were no guidelines up till now. Then I raised the issue. It is contradictory to the Act itself. Sections 78 and 80 stated that Inspector can raid, seizure, or arrest any person. Then how can the Government go beyond that to delegate these powers to SP or Commissioner?

(Followed by 2s/KSK)

KSK/GS/3.15/2S

SHRI M. VENKAIAH NAIDU: When was it done?

SHRI P. RAJEEVE: It was done in December.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Kindly address the Chair.

SHRI P. RAJEEVE: Then after that, the Executive published this Order, that is, on 9th January, 2013. This has questioned the power of the Parliament. Actually, I have raised this issue. I want a clarification from the Minister.

SHRI M. VENKAIAH NAIDU: Sir, the hon. Minister is well versed with law. After the matter was raised in Parliament and he had questioned it, subsequently in 2013 January, the Executive issued an order.

SHRI KAPIL SIBAL: That is not an order; it's an advisory. This is an advisory which, under the Act, we are entitled to issue. The State Governments may follow it or may not follow it. But, it is an advisory. We are entitled under the Act to issue it. There is no violation of the powers of Parliament.

SHRI P. RAJEEVE: I totally disagree with that argument. It is a debating point. We can debate on it later. No Government has the right to go beyond the provisions of the Act. No Government can give guidelines either in the form of advisory or as mandatory and go beyond the provisions of this Act. That is totally diluting the supremacy of the Parliament.

(**MR. DEPUTY CHAIRMAN in the Chair**)

Then, I would like to invite the attention of the House to new directions of the Director of Public Prosecution in U.K.

MR. DEPUTY CHAIRMAN: Mr. Rajeeve, please conclude.

SHRI P. RAJEEVE: Actually, I have to raise some other issues. You are sitting on the Chair. But, this is another issue. I would not like to raise that issue. In U.K., the Director of Public Prosecution recently put out interim prosecution guidelines. I invite hon. Minister's attention to these new guidelines.

MR. DEPUTY CHAIRMAN: Please, conclude.

SHRI P. RAJEEVE: I will just read two or three sentences only. It specifically stated that Prosecutors may only start a prosecution if a case satisfies the test set out in the Code for Crown Prosecutors. This test has two stages: the first is the requirement of evidential sufficiency and the second involves consideration of the public interest. I invite the Minister's attention to these recent guidelines. It is a very serious issue. Actually, 66(A) is a draconian rule. It goes beyond the provisions of article 19(2) of reasonable restriction. I accept the proposal given by the hon. Minister, but I ask the hon. Minister to give an assurance. It should be in a time-bound frame for a Round Table, for a consultation, and it should consider all the genuine points raised by myself and other colleagues. If the hon.

Minister gives a time-bound assurance, I am ready to accept his proposal.

SHRI KAPIL SIBAL: Sir, I am very happy that my learned colleague has agreed to my suggestion. If the Supreme Court were to give me an assurance as to when they will render a judgement, I shall give you an assurance about the time frame. As and when the judgement comes, we shall do it after that.

MR. DEPUTY CHAIRMAN: Okay, that's an assurance.

SHRI P. RAJEEVE: But when will he take up consultations. That is the question I have put.

MR. DEPUTY CHAIRMAN: No, that is an assurance because it is subject to Supreme Court's decision. You should take it as an assurance. Now, are you withdrawing the Resolution?

SHRI P. RAJEEVE: On the basis of this assurance, I withdraw the Resolution.

The Resolution was, by leave, withdrawn.

(Ends)