

Enforcement of unconstitutional laws in India

What is the issue?

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Indian laws continue to be implemented in the country despite being declared unconstitutional by the judiciary.

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What are such legal pronouncements?

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- **Section 66A** provides punishment for sending offensive messages through communication services.

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- These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of text, images, audio and video.

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- In 2015, the Supreme Court struck down Section 66A of the Information Technology (IT) Act, 2000, as unconstitutional.

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- This decision under the Shreya Singhal v. Union of India judgement was heaped with praise by domestic and foreign media alike.

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- However, even after the judgement, the Muzaffarnagar police in Uttar Pradesh arrested and detained a person for allegedly committing a crime under Section 66A for posting some comments on Facebook last year.

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- Media outlets have also reported other instances where Section 66A has been invoked by the police.

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- This points to a serious concern on the implementation of the verdict, if the police still jail persons under unconstitutional laws.

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- This also shows a tendency of some laws to inhabit the Indian legal system even after their legal deaths.

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- Media reports on the continued application of Section 66A lend themselves to a narrative that the police are abusing their power in hamlets to commit the most obvious wrongs.
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- But the facts show that this is far from the truth.
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- From police stations, to trial courts, and all the way up to the High Courts, we found Section 66A was still in vogue throughout the legal system.
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- Also, the Supreme Court in Mithu vs. State of Punjab struck down Section 303 of the Indian Penal Code as unconstitutional.
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- Section 303 provided for a mandatory death sentence for offenders serving a life sentence.
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- In 2012, years after Section 303 had been struck down, the Rajasthan High Court intervened to save a person from being hanged for being convicted under that offence.
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- Thus the issue of applying unconstitutional penal laws long preceded Shreya Singhal and Section 66A in the Indian justice system.
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What are the reasons?

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- The primary reason for poor enforcement of judicial declarations of unconstitutionality is signal failures between different branches of government.
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- Today, the work of the Supreme Court has firmly placed it within the public consciousness in India.
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- It is common to read reports about the court asking States and other litigants for updates about compliance with its orders (an example being orders in mob lynching petitions).
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- While this monitoring function is one that the court can perform while a litigation is pending, it cannot do so after finally deciding a case, even after directions for compliance are issued.
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- Instead, it needs help from the legislature and executive to ensure its final

decisions are enforced.

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- Commonly, in this context one thinks of **active non-compliance** that can undermine the work of courts as in the aftermath of the Sabarimala verdict.
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- But these publicised acts of defiance have hidden what is a systemic problem within the Indian legal system.
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- There exists no official method for sharing information about such decisions, even those of constitutional import such as Shreya Singhal case.
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- For any bureaucratic structure to survive, it needs working communication channels for sharing information.
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- The probability of decisions taken at the highest echelons of a system being faithfully applied at the lowest rungs greatly depends on how efficiently word gets to the ground.
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- At present, even getting information across about court decisions is an area where the judiciary needs help.
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- So, unless Parliament amends a statute to remove the provision declared unconstitutional, that provision continues to remain on the statute book.
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- This is why both Sections 66A and 303 are still a part of both the official version of statutes published on India Code and commercially published copies.
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- And while the commercially published versions at least mention the court decision, no such information is provided in the official India Code version.
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- Besides reading statutes, the government officials should consult notifications and circulars issued by relevant Ministries.
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- These notifications are another official method to share information about judgments declaring a provision unconstitutional.
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- Since the issuance of these notifications is not mandatory, there is no means to ensure that they are issued.
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- Also, there is no formal system on information sharing in the hierarchical set-up of the Indian judiciary.
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- There are few exceptions in some High Courts and district courts who did

issue circulars bringing important decisions to the notice of other members in the judiciary.

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What should be done?

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- The lack of authority to enforce its own decisions made the judiciary to be labelled as the least dangerous branch.

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- There is a need to avoid human error in enforcing judicial decisions to the greatest possible extent.

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- The urgency cannot be overstated since enforcing unconstitutional laws is sheer wastage of public money.

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- It will also make certain persons remain exposed to denial of their right to life and personal liberty in the worst possible way imaginable.

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- They will suffer the indignity of lawless arrest and detention, for no reason other their poverty and ignorance, and inability to demand their rights.

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- Thus there is a pressing need to move from a system where communication about judicial decisions is at the mercy of initiatives by scrupulous officers.

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Source: The Hindu

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