Enforcement of unconstitutional laws in India

What is the issue?

\n\n

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

\n\n

What are such legal pronouncements?

\n\n

\n
- **Section 66A** provides punishment for sending offensive messages through communication services.
\n
- 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.
\n
- In 2015, the Supreme Court struck down Section 66A of the Information Technology (IT) Act, 2000, as unconstitutional.
\n
- This decision under the Shreya Singhal v. Union of India judgement was heaped with praise by domestic and foreign media alike.
\n
- 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.
\n
- Media outlets have also reported other instances where Section 66A has been invoked by the police.
\n
- This points to a serious concern on the implementation of the verdict, if the police still jail persons under unconstitutional laws.
\n
- This also shows a tendency of some laws to inhabit the Indian legal system even after their legal deaths.
\n

- 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.
  \n
- But the facts show that this is far from the truth.
  \n
- 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.
  \n
- Also, the Supreme Court in Mithu vs. State of Punjab struck down Section 303 of the Indian Penal Code as unconstitutional.
  \n
- Section 303 provided for a mandatory death sentence for offenders serving a life sentence.
  \n
- 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.
  \n
- Thus the issue of applying unconstitutional penal laws long preceded Shreya Singhal and Section 66A in the Indian justice system.
  \n

\n\n

What are the reasons?

\n\n

\n
- The primary reason for poor enforcement of judicial declarations of unconstitutionality is signal failures between different branches of government.
  \n
- Today, the work of the Supreme Court has firmly placed it within the public consciousness in India.
  \n
- 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).
  \n
- 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.
  \n
- Instead, it needs help from the legislature and executive to ensure its final

decisions are enforced.
\n
- 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.
\n
- But these publicised acts of defiance have hidden what is a systemic problem within the Indian legal system.
\n
- There exists no official method for sharing information about such decisions, even those of constitutional import such as Shreya Singhal case.
\n
- For any bureaucratic structure to survive, it needs working communication channels for sharing information.
\n
- 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.
\n
- At present, even getting information across about court decisions is an area where the judiciary needs help.
\n
- So, unless Parliament amends a statute to remove the provision declared unconstitutional, that provision continues to remain on the statute book.
\n
- 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.
\n
- And while the commercially published versions at least mention the court decision, no such information is provided in the official India Code version.
\n
- Besides reading statutes, the government officials should consult notifications and circulars issued by relevant Ministries.
\n
- These notifications are another official method to share information about judgments declaring a provision unconstitutional.
\n
- Since the issuance of these notifications is not mandatory, there is no means to ensure that they are issued.
\n
- Also, there is no formal system on information sharing in the hierarchical set-up of the Indian judiciary.
\n
- 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.
\n

\n\n

What should be done?

\n\n

\n
- The lack of authority to enforce its own decisions made the judiciary to be labelled as the least dangerous branch.
\n
- There is a need to avoid human error in enforcing judicial decisions to the greatest possible extent.
\n
- The urgency cannot be overstated since enforcing unconstitutional laws is sheer wastage of public money.
\n
- It will also make certain persons remain exposed to denial of their right to life and personal liberty in the worst possible way imaginable.
\n
- They will suffer the indignity of lawless arrest and detention, for no reason other their poverty and ignorance, and inability to demand their rights.
\n
- 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.
\n

\n\n

\n\n

Source: The Hindu

\n

