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REVISITING FREE SPEECH IN THE DIGITAL AGE: A CASE COMMENTARY ON THE SHREYA SINGHAL V. UNION OF INDIA

- Atulya Srivastava

CASE CITATION

CASE NAME: Shreya Singhal v. Union of India

COURT: Supreme Court of India

CITATION: (2015) 5 SCC 1, AIR 2015 SC 1523

BENCH: Justice J. Chelameswar and Justice Rohinton Fali Nariman

Date of Judgment: 24 March 2015

INTRODUCTION

The way that individuals perceive and express themselves has been transformed by digital communications. Digital media allows one to participate in government critique and democratic practices more effectively than ever before. Digital media enables people to express their opinions to millions of individuals around the world in seconds.

As a result of the rapid expansion of digital media; however, many governments are putting in place new regulations that limit what can be shared or expressed online. India has implemented Section 66A of its Information Technology Act from 2000 to assist with this objective.

In the landmark decision of *Shreya Singhal v. Union of India*,¹ the Indian Supreme Court ruled that Section 66A of the Information Technology Act violates the 19th (1) (a) of the Indian Constitution, ruling it unconstitutional. The court also ruled that vague and overly broad restrictions on speech on the Internet will deter political participation and other forms of democratic participation through the chilling effect created through such limitations on freedom of expression. To date, this ruling remains one of the most important constitutional rulings pertaining to digital rights in India..

This commentary will examine the facts of this case, the legal issues involved, the reasoning of the judges, the constitutional principles involved, and the larger implications that this judgment will have on contemporary digital democracy.

THE FACTS OF THE CASE

1. Section 66A was added to the 2000 Information Technology Act in 2008 by adding a section that criminalizes sending any information via a computer or communication device that is deemed grossly offensive or that could be perceived as a danger, causing inconvenience, annoyance, or ill will.²
2. The maximum penalty under this section is three years of prison.³
3. Following multiple arrests made across India under this section, there has been growing public outcry regarding the utility of the provision; an incident involving two young women from Palghar (Maharashtra) who were arrested for posting comments on the death of Bal Thackeray for shutting down Mumbai led to considerable media scrutiny of the provision.⁴ Various other arrests have taken place under Section 66A such as student cartoonists and critics of politics.

1. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

2. INDIA CONST. art. 19, cl. 1(a).

3. Information Technology Act, No. 21 of 2000, § 66A (India).

4. Information Technology (Amendment) Act, No. 10 of 2009 (India).

4. On behalf of a group of law students and college students in India who support free speech, Shreya Singhal filed a Writ Petition on Article 32 to challenge the constitutionality of Section 66A; numerous Writ Petitions with similar facts and arguments were combined before the Supreme Court of India.⁵
5. The Petitioners conveyed that the language in Section 66A violates their First Amendment Rights as provided under Article 19(1)(a) of the Constitution due to the vagueness of the terms used (e.g. annoying and grossly offensive) which allows for arbitrary detention or arrest.⁶

The Union of India counseled in favor of Section 66A, contending it was important in curtailing the misuse of the internet as well as ensuring public safety; other arguments in favor of Section 66A have been that it protects the State from slanderous usage by providing both civil and criminal remedies, discourages cyber bullying, assists in offences against national security, discourages cyber-terrorism, and encourages law enforcement to utilize technology more effectively.

LEGAL ISSUE

The Supreme Court of India looked at various fundamentals of the law regarding:

01. If Section 66A of The Information Technology Act violates Article 19(1)(a) of the Constitution.⁷
02. Whether or not restrictions on freedom of speech via Section 66A can be justified as necessary to protect the rights and safety of others within the provisions provided for Article 19(2).
03. Whether vague and undefined statutory expressions are constitutionally valid in criminal law.
04. Whether online speech deserves the same constitutional protection as traditional forms of speech.

5. Shreya Singhal v. Union of India, AIR 2015 SC 1523.

6. Romesh Thappar v. State of Madras, AIR 1950 SC 124.

7. Superintendent, Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633.

05. The constitutional validity of Sections 69A and 79 of the IT Act was one of the focal Points of Discussion; to determine how much State Regulation can restrict constitutional freedoms in relation to cyberspace.

DECISION BY THE COURT

The Supreme Court ruled in a unanimous decision, that section 66A was unconstitutional in its entirety.⁸ The Court determined that it contravenes Article 19(1)(a) and cannot be considered a reasonable restriction under Article 19(2).

Moreover the Court concluded that the terms used within section 66A were open ended and highly subjective. Examples are grossly offensive or annoying, said definitions vary from one person to another therefore by such definition created a great deal of discretion for the law enforcement agency(s).

Furthermore, the court stated that the statute created a chilling effect on the expression of free speech because a person would hesitate to express themselves lawfully, fearing being prosecuted criminally for their action.

In regard to the authority to block access to online content, the provisions of section 69A were found to be constitutional; however, the court ruled that there could be no liability for the intermediary provider under section 79 unless the intermediary removed the content in accordance with a court order or government notification through lawful procedure.⁹

8. Superintendent, Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633.

9. S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

LEGAL REASONING

MAJORITY OPINION

Justice Rohinton Nariman delivered the main judgment for the Court. In this case, the Court differentiated between the discussion, advocacy and incitement. Discussion or advocacy of some unpopular view is protected by Article 19(1)(a) and only if that speech is inciting people the Government can limit it under Article 19(2).¹⁰

The Court held that the constitutional limitation needs to be closely related to one of the grounds of limitation in Article 19(2) e.g. public order, defamation, inciting offence. Section 66A did not meet this standard as it was drafted in a manner that criminalised protected speech regardless of whether or not the speech was connected to public disorder.¹¹

The Court also relied on the doctrine of vagueness in making its determination. Laws that create a criminal penalty must define the prohibited conduct so citizens know what behaviour is prohibited or subject to criminal penalties. In the case of Section 66A, there was insufficient clarity as to what values would support or be the basis of criminal penalties under this provision of law.

The chilling effect doctrine was another significant factor in the Court's finding. The Court noted that because of vagueness, citizens are likely to be discouraged from exercising their right to free speech due to fear of being prosecuted under a vague law. The recognition of the chilling effect doctrine has significantly strengthened the development of free speech jurisprudence under the Constitution of India¹²

10. CyJurII Commentary on Shreya Singhal v. Union of India

11. Supreme Court Case Summary on Shreya Singhal v. Union of India

12. Global Freedom of Expression Case Analysis

SEPARATE OR DISSENTING OPINIONS

The ruling in this case was unanimous and therefore did not have any dissenting opinions.

STATUTORY AND INCIDENTS THAT WERE CONSIDERED

The court considered many constitutional principles and precedents, including Articles 19 (1) and (2) of the Constitution of India

Court cases

- Romesh Thappar v. State of Madras
- Superintendent of Central Jail, Madras v. Ram Manohar Lohia
- S. Rangarajan v. P. Jagjivan Ram.

The court also relied on American precedents regarding free speech such as Brandenburg v. Ohio.

The court utilized comparative reasoning from the United States constitutional system, modifying it to fit within India's constitutional framework..

CONSEQUENCES OF THE JUDGMENT

LEGISLATIVE CHANGES

The Supreme Court's decision overturned India's cyber law(s) and free speech protection(s) for the Digital Age by declaring Section 66A unconstitutional from the start of its existence.

The decision also confirmed that speech on the Internet is protected by the Constitution the same as (Federal and State) protected speech in the physical world. In addition, it reiterated that there must be reasonable rights for limiting freedom of speech on the Internet and that such restrictions must be narrowly defined and expressly defined.

The reading down of Section 79 significantly influenced intermediary liability jurisprudence in India. Social media platforms and intermediaries were protected from arbitrary takedown demands unless supported by legal process

IMPACTS ON THE SOCIETY AND POLITICS

This was a decision that contributed to enhancing people's ability to participate democratically in online communities. It also enabled individuals to have greater protection under the Constitution against arbitrary censorship, and against state abuse of criminal law.

The Supreme Court's decision had also triggered a much broader public discussion about issues of internet liberty, surveillance by governments, and the overall growth of the power of the state in relation to digital networks.

The implementation of the Supreme Court's decision, however, may reveal systematic problems in that the police in some states continue to charge people under section 66A of the Indian Penal Code, even after the Supreme Court ruled that provision unconstitutional. In cases where people are still facing prosecution under section 66A, civil society groups have referred to those cases as being "zombie" prosecutions as they are somehow lingering even after the provision no longer exists.

This exposed a serious enforcement gap between constitutional rulings and administrative compliance.

CRITICAL ANALYSIS

The Supreme Court's judgment was constitutionally sound and necessary. Section 66A represented a dangerous example of overcriminalization in the digital era. The provision effectively allowed criminal prosecution based on subjective emotional reactions. Such a standard is incompatible with constitutional democracy.¹³

13. LawCodeHub Analysis on Section 66A

The Court correctly recognized that vague speech restrictions are more dangerous in digital spaces because online expression is rapid, decentralized, and politically influential. If expressions like “annoyance” become criminal standards, almost every form of political criticism becomes vulnerable to prosecution.

The judgment also demonstrated judicial maturity by distinguishing advocacy from incitement. Democracies survive criticism, dissent, satire, and unpopular opinions. They collapse when governments criminalize discomfort.

ALTERNATIVE OUTCOMES

If the Court had merely read down Section 66A instead of striking it down completely, the provision would likely have continued enabling arbitrary arrests. The vagueness of the language was so extensive that partial interpretation would not solve the constitutional defect.

The Court therefore made the correct choice by invalidating the provision entirely.

CONCLUSION

One of the most significant constitutional rulings in India’s digital history is *Shreya Singhal v. Union of India*. The Supreme Court ruled that constitutional rights do not cease to exist simply because they take place in an online environment. The ruling upholds the ability of individuals to voice their opinions in opposition to the state and affirms the limitations placed on government censorship. It also creates important constitutional protections for individuals who use the Internet.

In addition, this decision demonstrates a broader constitutional principle. Freedom of Speech is not only a means of protecting speech that is agreeable to a person, but rather serves to protect those forms of speech that the state may wish to suppress, such as those types of speech that are critical in nature, or that others may not like. At the same time, the continued misuse of Section 66A after its invalidation exposed structural weaknesses in India’s legal enforcement mechanisms. Constitutional victories mean little if state authorities ignore judicial rulings.

The Shreya Singhal case is still important in the larger scope of digital governance because governments continue to try and control online speech with ambiguous legal standards that they justify as being about security, morality, or public order. The Shreya Singhal principles therefore have application beyond India and stand as a long-lasting constitutional caution against excessive government regulation of digital expression.