



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Shreya Singhal v. Union of India: Analysis of Section 66A

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Abstract

The Supreme Court's decision in *Shreya Singhal v. Union of India* (2015) is a landmark judgment that significantly strengthened the protection of freedom of speech and expression in the digital era. The case challenged the constitutional validity of Section 66A of the Information Technology Act, 2000, which criminalized the sending of online messages that were considered offensive, annoying, or inconvenient. The provision was criticized for its vague and overbroad language, which led to arbitrary arrests and misuse by authorities. This case commentary examines the factual background, legal issues, and reasoning adopted by the Supreme Court in striking down Section 66A as unconstitutional. It analyzes the Court's interpretation of Article 19(1)(a) and Article 19(2) of the Constitution, the doctrine of vagueness, and the concept of the chilling effect on free speech. The commentary further evaluates the broader constitutional significance of the judgment in protecting digital rights and ensuring that online expression receives the same constitutional protection as offline speech. The decision remains a cornerstone of Indian free speech jurisprudence and continues to influence debates on internet regulation, online censorship, and democratic participation in the digital age.

Keywords: Freedom of Speech, Section 66A, Information Technology Act, Shreya Singhal, Digital Rights, Article 19(1)(a), Chilling Effect, Internet Freedom.

INTRODUCTION

The case of *Shreya Singhal v. Union of India* is one of the most significant judgements delivered by the Supreme Court of India concerning freedom of speech and expression in the

digital era.¹ Delivered in 2015, the judgement struck down Section 66A of the Information Technology Act, 2000, holding that it violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The Court held that the provision imposed unreasonable restrictions on online speech and was unconstitutional because of its vague and overbroad language and open to misuse.

The case emerged against the backdrop of increasing misuse of Section 66A by law enforcement authorities to arrest individuals for social media posts, comments, and online criticism of political leaders and government policies. These incidents created fear among citizens and raised serious concerns about the protection of free speech in a democratic society. In this context, the judgment became a landmark ruling as it reaffirmed the importance of constitutional freedoms and emphasized that democratic discussion and dissent must be protected, even in the online space.² This commentary examines the facts of the case, the legal issues involved, the reasoning adopted by the Supreme Court, and the broader constitutional significance of the judgement.

FACTS OF THE CASE

Section 66A was introduced into the Information Technology Act through the Information Technology (Amendment) Act, 2008. The provision made it a criminal offence to send any information through a computer resource or communication device that was considered “grossly offensive,” “menacing,” or capable of causing “annoyance,” “inconvenience,” “danger,” or “ill will.”³ A person found guilty under this provision could be punished with imprisonment for up to three years along with a fine.³

The controversy surrounding the provision intensified after several arrests were made for harmless online expressions. This raised important questions about the extent to which online speech could be restricted in a democratic society. One of the most widely discussed incidents involved the arrest of two young women from Palghar, Maharashtra.⁴ One of the women had posted a comment on Facebook criticizing the shutdown of Mumbai after the death of political leader Bal Thackeray, while the other had merely “liked” the post.⁵ The arrests generated nationwide outrage and raised serious concerns about misuse of the law.

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

² *Shreya Singhal*, (2015) 5 S.C.C. 1, ¶ 13.

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

⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

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

These repeated instances of arbitrary arrests created fear among internet users and highlighted the potential danger posed by vague and broadly worded legal provisions such as Section 66A.⁶ It was in this background that Shreya Singhal filed a writ petition before the Supreme Court under Article 32 of the Constitution, challenging the constitutional validity of Section 66A of the Information Technology Act.⁷

LEGAL ISSUES

The Supreme Court considered several important constitutional questions:

1. Whether Section 66A violated the fundamental right to freedom of speech and expression under Article 19(1)(a).
2. Whether the restrictions imposed by Section 66A could be justified under Article 19(2) of the Constitution.
3. Whether the terms used in the provision were vague, arbitrary, and excessively broad also about “chilling effect”.

JUDGEMENT OF THE SUPREME COURT

The Supreme Court, through a judgment delivered by Justice Rohinton F. Nariman, struck down Section 66A of the Information Technology Act, 2008 declared its entirety as unconstitutional. The Court held that the provision violated Article 19(1)(a) and did not fall within the reasonable restrictions permitted under Article 19(2).⁸ While examining the validity of the provision, the Court observed that terms such as “grossly offensive,” “annoyance,” and “inconvenience” were vague, unclear, and open to multiple interpretations. Because of this vagueness, different authorities could interpret them differently according to their personal understanding.⁹ The court noted that such vagueness or uncertainty gave extra discretionary powers to police authorities and increased the possibility of arbitrary arrest and misuse of the law.

The Supreme Court further emphasized that in a democratic society, citizens have the right to express their opinions freely, even if those opinions are unpopular, critical, or offensive to

⁶ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1, ¶¶ 83–90.

⁷ INDIA CONST. art. 32; *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

⁸ INDIA CONST. art. 19, cls. 1(a), 2; *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

⁹ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1, ¶ 85.

certain sections of society. The court clarified that mere discussion of a particular viewpoint is protected under the constitution unless it amounts to public disorder. In this regard, the judgment made an important distinction between “discussion,” “advocacy,” and “incitement,” holding that only speech that incites violence or public disorder can be legitimately restricted under Article 19(2) of the Constitution.¹⁰ The judgment was therefore regarded as a major victory for free speech and constitutional liberty in India, particularly in the context of online expression and digital communication.

Analysis of Section 66A

One of the primary reasons why the Supreme Court struck down Section 66A was because of its vague and overbroad nature. In Criminal laws, it is expected to clearly define what conduct is prohibited so that individuals can understand the limits of lawful behaviour.¹¹ However, Section 66A used so many expressions without providing any legal definition for those terms. The supreme court observed that such terms are highly questionable because what may appear offensive to one person may not have the same effect on another. The absence of certainty in the language of the law created confusion and made the provision vulnerable to arbitrary interpretation by law enforcement authorities. The court further noted that vague laws are dangerous in a society. In practice, Section 66A was frequently used against individuals for posting political opinions, criticism of public officials, satire, cartoons, or comments on social media platforms.

In the present case, Section 66A criminalized a vast range of online communication without establishing any clear connection between the prohibited speech and actual harm to public order, security of the State, or incitement to violence.¹² Consequently, the provision went beyond the reasonable restrictions permitted under Article 19(2) of the Constitution. The Court observed that democracy can function effectively only when citizens are free to express their views openly and participate in public debate without fear of punishment.¹³ The fear of arrest or prosecution created a “chilling effect” on free speech, where individuals began censoring their own opinions to avoid legal consequences. Such self-censorship weakens

¹⁰ INDIA CONST. art. 19, cl. 2; *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1, ¶ 13.

¹¹ INDIA CONST. art. 19, cl. 1(a).

¹² information Technology Act, No. 21 of 2000, § 66A, India Code (2000).

¹³ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

democratic participation and undermines the exchange of ideas that is necessary in a free society.

The judgment therefore reaffirmed the principle that restrictions on free speech must be narrowly tailored, clear, and directly connected to the grounds mentioned under Article 19(2). Mere annoyance, inconvenience, or offensiveness cannot be treated as sufficient grounds to curtail constitutional freedoms. By criminalizing protected speech and granting excessive discretion to law enforcement authorities, Section 66A exceeded constitutional limits and was therefore declared unconstitutional.¹⁴ Furthermore, the judgment became an important milestone in the evolution of digital rights jurisprudence in India because it recognized the internet as a vital platform for democratic dialogue and free exchange of ideas. The decision reaffirmed that constitutional protections apply equally in the digital sphere and that online speech cannot be subjected to arbitrary state control merely because it is communicated through electronic platforms.¹⁵

CRITICAL EVALUATION AND SIGNIFICANCE OF THE JUDGEMENT

The decision in *Shreya Singhal v. Union of India* has been widely regarded as one of the most important judgments on free speech and digital rights in India. At a time when social media was increasingly being used as a medium for political discussion, activism, and public debate, the judgment played a crucial role in protecting citizens from arbitrary state action and misuse of criminal law.¹⁶ Another important aspect of the judgment was its recognition of the internet as an essential space for democratic participation and exchange of ideas. The judgment later influenced debates concerning intermediary liability, digital regulation, online censorship, and internet governance in India. It established important constitutional principles:

- Laws restricting speech must be clear and narrowly drafted.
- Vague criminal provisions violate constitutional guarantees.
- Discussion and advocacy are protected forms of speech.

¹⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

¹⁵ Apar Gupta, Free Speech and the Internet: The Aftermath of *Shreya Singhal v. Union of India*, 8 NUJS L. REV. 121 (2015).

¹⁶ Apar Gupta, Free Speech and the Internet: The Aftermath of *Shreya Singhal v. Union of India*, 8 NUJS L. REV. 121 (2015).

Despite its significance, the judgment has also attracted criticism from certain scholars and policymakers. Some argue that striking down Section 66A entirely may have weakened the State's ability to regulate harmful online content such as cyberbullying, hate speech, online harassment, and fake news.¹⁷ Critics suggest that the absence of an effective legal framework may create practical difficulties in dealing with abusive online conduct. In this regard, the judgment reaffirmed that constitutional rights cannot be sacrificed merely for administrative convenience state discretion. Reports revealed that even after Section 66A had been declared unconstitutional, police authorities in several states continued to register cases under the provision.¹⁸ Even today, the judgment continues to hold great importance in Indian constitutional law and plays a significant role in shaping discussions on freedom of speech, digital rights, internet regulation, and the protection of civil liberties in the modern digital era.

¹⁷ Siddharth Narrain, The Constitutionality of Section 66A of the Information Technology Act, 49 ECON. & POL. WKLY. 10 (2014).

¹⁸ People's Union for Civil Liberties v. Union of India, W.P. (C) No. 314/2015 (India).