



# The Indian Journal for Research in Law and Management

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## CASE COMMENTARY: SHREYA SINGHAL V. UNION OF INDIA

*Innama Haider*

### CASE DETAILS

|                                |                                                                   |
|--------------------------------|-------------------------------------------------------------------|
| <b>Court</b>                   | Supreme Court of India (Two-Judge Constitutional Bench)           |
| <b>Judges</b>                  | J. Chelameswar & Rohinton Fali Nariman, JJ.                       |
| <b>Petitioner</b>              | Shreya Singhal (and parties in connected petitions)               |
| <b>Respondent</b>              | Union of India                                                    |
| <b>Provisions Challenged</b>   | Sections 66A, 69A, and 79 of the Information Technology Act, 2000 |
| <b>Constitutional Articles</b> | Articles 14, 19(1)(a), 19(1)(g), and 21                           |

### II. CONTEXT AND BACKGROUND

A number of arrests under Section 66A of the Information Technology Act, 2000—a clause added by the IT (Amendment) Act of 2008—led to the case. Sending electronic messages that were "grossly offensive," "menacing in character," or known to be false and intended to create annoyance, discomfort, danger, obstruction, insult, harm, criminal intimidation, enmity, hatred, or ill-will was made illegal by Section 66A.

The clause quickly gained notoriety for being abused. Public opinion was sparked by three occurrences in particular, which led to an influx of writ petitions:

- Two young ladies were arrested in Palghar, Maharashtra, in 2012; one had posted a Facebook comment criticising Mumbai's closure after Bal Thackeray's death, while the other had only "liked" the post.

- For sending a political cartoon via email, a lecturer from Jadavpur University in West Bengal was taken into custody.
- For allegedly criticising a politician in a tweet, a businessman in Chennai was taken into custody.

These incidents exposed the vast potential for misuse of the provision. Shreya Singhal, a law student, petitioned the Supreme Court for a writ under Article 32. A group of related petitions were combined and presented before a two-judge panel, who considered the case to raise significant constitutional law issues.

### **III. ISSUES BEFORE THE COURT( MAIN QUESTIONS):**

- 1) Was Article 19(1)(a)'s fundamental right to freedom of speech and expression compromised by Section 66A?
- 2) Could the allowable limitations listed in Article 19(2) save Section 66A?
- 3) Did Section 66A violate Articles 14 and 21 as well?

#### **Secondary Questions**

1. Whether Section 69A (empowering the government to direct censorship of internet information) and the censorship Rules of 2009 were constitutionally valid?
2. Whether the Intermediary Guidelines of 2011, particularly the requirement to remove content on a private complaint, and Section 79 (intermediary safe harbour) were constitutional?

### **IV. FACTS OF THE CASE**

The arrest of two young ladies in November 2012 in Palghar, Maharashtra, was the direct cause of the appeal. Shaheen Dhada's friend Rinu Srinivasan only "liked" a Facebook message she made asking why Mumbai had been shut down after Shiv Sena leader Bal Thackeray passed away. Section 66A led to both arrests. Although the arrests sparked a national outcry, the charges were subsequently withdrawn.

In addition to Palghar, the factual background included the following incidents:

In 2012, Jadavpur University chemistry professor Ambikesh Mahapatra was jailed for sending a cartoon of West Bengal Chief Minister Mamata Banerjee via email.

In 2012, Puducherry businessman Ravi Srinivasan was arrested for reportedly accusing the son of then-Finance Minister P. Chidambaram of corruption in a tweet.

Political cartoonist Aseem Trivedi was arrested in 2012 under Section 66A and charged with sedition for cartoons he had posted on his website that were critical of the Constitution and Parliament.

Together, these incidents showed that Section 66A was being routinely used against political dissent, satire, and criticism of public figures—the very core of expression that constitutional free speech protections are meant to protect—rather than against actual threats to public safety. In light of these facts, then-law student Shreya Singhal filed an Article 32 petition with the Supreme Court.

## V. THE PARTIES' ARGUMENTS

- The petitioners contended that Section 66A was full of ambiguous, subjective phrases, such as "grossly offensive," "menacing," "annoyance," and "ill-will," none of which had any established legal meaning.

Due to the inherent subjectivity of these criteria, the clause gave the police unrestricted discretion and covered political satire, criticism, and artistic expression in addition to truly destructive speech.

Importantly, none of the grounds for restriction listed in Article 19(2)—an exhaustive, not illustrative, list that includes sovereignty, security, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, and incitement to an offense—corresponded to the terms used in Section 66A.

The petitioners argued that Section 79 violated Article 19(1)(a) and amounted to private censorship because it allowed any private person to force an intermediary to remove content without a court or governmental authority.

- **The Union of India said** that because of its speed, reach, and durability, internet communication presented a different and possibly more serious threat than offline speech, necessitating particular legal regulation. Citing similar restrictions in the UK's Communications Act 2003 (Section 127) as proof of a legitimate legislative practice, it urged the Court to read down rather than strike down Section 66A. It argued that the contested language did not make the clause fatally ambiguous and could be interpreted by judges.

## VI. THE JUDGEMENT

### A. SECTION 66A: COMPLETELY OVERTURNED

On several, supporting reasons, the Court unanimously declared Section 66A to be unconstitutional.

ambiguity. The adjectives "grossly offensive," "menacing," "annoyance," "inconvenience," and "ill-will" that were used in Section 66A were incredibly ambiguous. They don't provide a measurable benchmark by which an individual could gauge their behaviour. What irritates one person may be quite acceptable to another, and what is extremely offensive to one may not be to another. The Court noted that it was hard to predict whether a particular communication would exceed the legal threshold because the provision lacked a principled criteria.

- **Overbreath:** Due to the provision's unrestricted scope, it covered a significant amount of constitutionally protected speech, including social commentary, political criticism, and artistic creations, in addition to unprotected communication. Any speaker had good cause to self-censor out of concern that their words would offend someone, somewhere. This chilling effect was widespread.
- **Outside of Article 19(2):** This was arguably the most significant finding in the ruling. The Court unequivocally reiterated that Article 19(2) offers a comprehensive, not illustrative, list of acceptable limitations on free expression. Beyond what Article 19(2) allows, Parliament cannot establish new categories of expression that are subject to regulation.
- **Conversation, Support, and Inspiration:** Based on its previous rulings, especially *Superintendent, Central Prison v. Ram Manohar Lohia* and *Kedar Nath Singh v. State of Bihar*, the Court established a fundamental distinction between three types of expression: (i) advocacy of an idea, (ii) mere discussion of an idea, and (iii) incitement to impending unlawful action. For reasons of security or public order, only the third may be limited. Since Section 66A did not make this difference, it might penalise advocacy and discussion, which are at the core of constitutionally protected speech.

Rejecting "Read Down." The clause was not read down by the Court. The entire section was unconstitutional; it wasn't limited to specific words that may be removed. No narrower core could be preserved.

The UK Analogy Was Turned Down. The Court observed that the UK provision functioned within a strong human rights framework with significant judicial oversight—features that are noticeably lacking in Section 66A.

## **B. SECTION 69A: UPHELD**

It was upheld as constitutionally valid that Section 69A, which gives the Central Government the authority to order the blocking of online content on specific grounds (sovereignty and integrity of India, defence, security of the State, friendly relations with foreign States, public order, or preventing incitement to a cognisable offence).

The Court determined that the grounds for blocking followed allowable constitutional area because they resembled the words of Article 19(2).

There were procedural safeguards in place, such as the requirement that blocking orders be in writing with documented reasons, the availability of an internal review committee, and the possibility of judicial review. The Court was convinced that Section 69A was a reasonable and adequately protected restriction on the right to free speech.

### **C. READ DOWN ON SECTION 79 AND INTERMEDIARY LIABILITY**

Intermediaries are shielded from liability for third-party content by Section 79, provided that due diligence requirements are met. Intermediaries were required by Rule 3(4) of the Intermediary Guidelines of 2011 to remove content within 36 hours of receiving a complaint from "any affected person."

The Court determined that the safe harbour was incompatible with Article 19(1)(a) and essentially privatised censorship when it was conditioned on cooperation with removal requests from private individuals without any court or governmental authority. According to Section 79(3)(b), an intermediary only loses its safe harbour when a court order or notification from a government agency expressly mandates that it take action. A private grievance is not enough on its own. This interpretation eliminated the private-party veto's stifling effect on online expression while restoring the safe harbour to its original purpose.

### **VII. KEY LEGAL PRINCIPLES**

Vagueness is void. The vagueness theory was formally incorporated into Indian constitutional law by the ruling. Because it fails to provide potential offenders with fair notice and encourages arbitrary and discriminatory enforcement, a punitive law whose operative contents are so ambiguous that people of ordinary intellect cannot fairly understand their extent is unconstitutional.

Article 19(2) is comprehensive. Article 19(2) provides a wide range of justifications for limiting free expression. New unprotected speech categories that do not relate to those grounds cannot be created by legislation.

### **VIII. CRITICAL ANALYSIS :**

Although the ruling is praised for overturning ambiguous and overly expansive laws, it created a regulatory void because there is now no explicit clause that deals with cyberstalking or online harassment. The blocking regime's lack of transparency in practice has led to criticism of the upholding of Section 69A. The ruling is essentially diagnostic, stating what cannot be done without offering a substitute that complies with the constitution. The discrepancy between constitutional adjudication and practical enforcement was further brought to light by post-ruling arrests under Section 66A.

## CONCLUSION

*Shreya Singhal v. Union of India* firmly establishes that free speech protections apply fully to online expression and that vague, overbroad penal provisions cannot survive constitutional scrutiny. Its insistence on the exhaustiveness of Article 19(2) and the discussion–advocacy–incitement distinction remain its most enduring contributions. However, translating this constitutional victory into lasting institutional practice remains an ongoing challenge.