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CASE COMMENTARY

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SHREYA SINGHAL v. UNION OF INDIA (2015)¹

Citation : 2015 (2) AICLR,1514/J-8015217/; AIR : 2015 SC 1523; W.P.(Crl.) No. 167 of 2012

Decided: 24 March 2015

Bench : 2-Judge bench, Justice R.F. Nariman & Justice Dr. D.Y. Chandrachud

Political Dimensions of Cyber Space: Freedom of Speech, Information Technology Law, Constitutional Law

One case that has altered the entire landscape of free speech on internet in India is Shreya Singhal v. Union of India (2015). Until then, the police could arrest anyone for posting something "offensive" or "menacing" online (whatever those terms happened to mean in each officer's or court's mind) as it was facilitated by Section 66A of the IT Act². That was when Shreya Singhal, then a law student, decided to intervene — two shy teenage girls in Pune were arrested simply for posting a Facebook comment mocking a political party. It was not until 2015 that the Supreme Court of India declared Section 66A unconstitutional as it flouts our right to free speech under Article 19(1)(a)³. It's not just a case — arguably the most significant free speech ruling after Kesavananda Bharati⁴, and the reason you can still put something on social media today without being arrested.

BACKGROUND & FACTS

Section 66A of the IT Act was, in effect, a law that authorized the police to arrest any person who posted anything on the internet that an authority deemed "offensive" or "menacing." The biggest problem? Nobody knew what those words meant! The law itself did not give any definitions. That means if you made a Facebook post, a tweet, or WhatsApp message that the police did not approve of, they could apply Section 66A and throw you in jail. One thing was evident, it was confusing cause there really wasn't a standard I mean, you had no idea what you could and couldn't do with the film. To make matters worse, it was like trying to play a

¹ Shreya Singhal v. Union of India, AIR 2015 SC 1523 (2015).

² Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

³ Constitution of India, art. 19(1)(a).

⁴ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India).

video game whose rules were constantly changing, and if you broke one of the many unrecognized and never stated rules somewhere — you got arrested.

Such was the fate of two young women in Pune in 2012. The only thing Disha Ravi and her friend had in common was that they were Facebook friends who got alongside the Bharatiya Janata Party, putting comments on a post supporting a shutdown of Mumbai during a political leader's death. There you go — two of posts on social media. But instead both were arrested under Section 66A — one for six days, the other not charged but then interrogated. The only crime they committed was to offend some people with their comments online. Another man was arrested in Rajasthan about the same time for his Facebook post on why, people should vote for a particular party. But these arrests also confirmed that abuse of Section 66A was being used to silence criticism and dissent.

Then a law student, Shreya Singhal⁵ witnessed this and decided to challenge it. Even though she had not been arrested herself, she initiated Public Interest Litigation (PIL) in the Supreme Court against Section 66A because she just recognised that this is a very dangerous law and we need to protect each other's right to free speech online. Her case made its way to the Supreme Court and soon, was one of the biggest free speech battles in Indian history⁶. The PIL which began from a single law student eventually bore fruit on Thursday when the top court struck down a law that has been misused to arrest scores of people country.

ISSUES RAISED

There are four big questions that the Supreme Court had to wrestle with in this case.

1) Oct 26, 2023: Is Section 66A against free speech.

The question at heart was whether this law impinged upon the rights enshrined under Article 19(1)(a) — our right to freedom of speech and expression, a fundamental right. Is something really free speech if you can't hit post without running the risk of arrest?

2) Is the law too vague and punitive?

What was wrong with Section 66A, was that it employed vague terms like "offensive" and "menacing". The key question before the Court was whether such vagueness violates Article 14⁷ (right to equality) Though a law that does not define what is illegal cannot possibly be just, filling the crime void with vague language merely gives police a free rein to arrest anyone they choose.

3) Is "reasonable restrictions"

Freedom of speech is a fundamental right in the Constitution, but can be restricted by an extremely limited number of grounds specified under Article 19(2)⁸ — such as national security, public order or defamation. The only question which the Court had to decide was

⁵ Shreya Singhal v. Union of India, Wikipedia, https://en.wikipedia.org/wiki/Shreya_Singhal_v._Union_of_India

⁶ Case: Shreya Singhal v Union of India (2015), Dhyeya Law, <https://www.dhyeyalaw.in/shreya-singhal-v-union-of-india>

⁷ Constitution of India, art. 14.

⁸ Constitution of India, art. 19(2).

whether Section 66A would actually fall under any of these exceptions or whether it was a blanket ban on criticism.

4) Should Facebook and Google be liable for what users post?

Intermediary Liability – Section 79 of the IT Act So if a post is illegal, who is at fault: the criminal or Facebook? It then needed to determine just when platforms like Facebook, Google and Twitter can be held responsible for user material, and when they're merely intermediaries.

ARGUMENTS BY PARTIES

What the Petitioners Said:

The petitioners challenging Section 66A made a very simple yet compelling argument — that the law was largely an open-ended warrant for police to apprehend individuals they vigilantly opposed. Section 66A is indefinite that people do not know as to which acts are illegal and which acts are not. Is There a Definition for Every Politically Incorrect Thing with Words Like "Offensive" and "Menacing"? - There are no universal definitions of things that could be easily perceived as politically incorrect, such as the terms offensive and menacing. If the police can simply declare what is "offensive" and arrest you on their whim, that isn't a law -- that's granting them unending power to suppress speech⁹.

They even mentioned the dreaded "chilling effect"¹⁰ — this is he who could hear a fly buzz before she died. But when you don't even know what's gonna get you arrested, then ya stop posting anything that might be considered controversial. You self-censor. This is exactly what the government doesn't want in a democracy. Firstly, mere posting of something does not cause harm to the citizens but this law directly violates Article 19(1)(a) because it puts a restriction on free speech.

Respondents argued:

But the government was singing a different tune elsewhere. They said: well, the internet is a beast — you allow any one, to post anything, to millions of people in an instant. That is why the government should wield some powers over what happens on the Internet. The Government said that the Section 66A was a necessary tool for safeguarding national security and public order. When any post has the potential to instigate riots or harm national security, it should be possible for governments to put a stop to it well before it is circulated.

They went on to draw a parallel: we already have laws that place limits on what newspapers, television channels and radio stations can say¹¹. If print and broadcast media can be regulated regarding matters such as defamation, obscene speech and threats to national security

⁹ Shreya Singhal vs Union of India: Landmark Case & Download PDF, Testbook, <https://testbook.com/landmark-judgements/shreya-singhal-vs-union-of-india>

¹⁰ Shreya Singhal v. Union of India, Columbia Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/>

¹¹ Shreya Singhal V. Union Of India: A Case Which Rejuvenated The Liberty Of Speech, iPleaders (May 26, 2020), <https://blog.ipleaders.in/shreya-singhal-v-union-india-case-rejuvenatedd-liberty-speech-expression-country/>

narrowly tailored [424] —then why shouldn't the internet be subjected to at least that limited regulation? What they were saying — more or less — was that the internet is just another form of communication — so what applies to those communication mediums should apply here. Example: If you wouldn't be able to print something defamatory in a newspaper, then why would it be OK to post it online?

But that's the flaw in their argument: they claim police would prosecute someone by simply writing something "offensive,"¹² without sufficient context, but current laws for print don't allow people to be arrested. The government was wanting to give themselves a lot more control over the internet experience than they ever had with computers in real life. Which the Supreme Court saw clearly through.

Note how these are really the actual pronouncements of the Supreme Court:

The Supreme Court did not mince its words. They quashed Section 66A in its entirety, declaring it unconstitutional because it contravened Article 19(1)(a) of the Constitution — the Fundamental Right to free speech. The law had been much too vague and probably far too broad, the Court said. Because the words like "offensive" and "menacing" weren't defined anywhere in the law, it just granted police carte blanche to arrest anyone for posting anything they found distasteful. A democracy doesn't exactly operate that way¹³. The Court realized that when you have a vague law like this, it makes people afraid to speak at all. They start self-censoring. This is the "chilling effect" — and it ends free speech even without an arrest.

The Court next considered if section 66A could be saved as "reasonable restriction" under Article 19(2). While the Constitution permits restrictions on free speech, those restrictions must relate to certain clearly defined categories of speech including national security, public order and defamation, or incitement to violence¹⁴. The Court noted that Section 66A did not come under any of these categories. The Court pointed out the important difference between advocacy and incitement. You can discuss an idea (even a bad one) — that is expressly protected advocacy. However, if you are actively encouraging people to commit violence or cause chaos and there is a direct line from your words to the violence, that is incitement — which can be curtailed. This meant Section 66A was too broad, as it punished both.

That one thing was very important about the internet, also stressed by the Court. The internet didn't deserve to be a second-rate platform for free speech, they said. Indeed, the Court acknowledged that the internet is actually MORE vital to free speech because it provides a forum for speaking truth — rich or poor, educated or not. And as the Court famously asserted: "The internet provides a forum for individuals to voice their opinions with little or no cost to promote those viewpoints¹⁵." Which means that, with a single post, even an average citizen can reach millions of people without having to write an article for a

¹² Shreya Singhal v. Union of India (2015): Safeguarding Freedom of Speech, SSRN (Apr. 19, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6510340

¹³ In which case the Supreme Court of India struck down Section 66A of the IT Act, Testbook, <https://testbook.com/question-answer/in-which-case-the-supreme-court-of-india-struck-do--6341438bca9951c09002d3d9>

¹⁴ According to the Supreme Court in the Shreya Singhal v. Union of India, Testbook, <https://testbook.com/question-answer/according-to-the-supreme-court-in-the-shreya-singh--6690d0384438d80238852cc9>

¹⁵ RGNUL (2010), <https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>

newspaper or air it on TV. This means that protection for free speech on the internet should be at least as robust as it is for print or broadcast media.

Finally, the Court also worked with two more sections of the IT Act. They told the Ministry of Electronics and Information Technology that Facebook, Google and Twitter cannot be held liable for everything users end up posting under Section 79 (intermediary liability). They're just middlemen. You only had to take it down if a court or the government said you specifically should. This was a major victory for the internet — without some protection against liability for what users post, platforms would simply remove everything to be safe. The Court upheld Section 69A (Power to issue directions for blocking access to any information) They argued that the government can ban websites and content, but there are safeguards. The Court accepted the process is secret — you are not told why your content has been blocked — but said it was for national security. This part the Court upheld, though not everyone was on board.

SIGNIFICANCE/IMPACT

Why This Case Actually Matters:

This is not just another lawsuit — it may well be the most critical free speech ruling in India since *Kesavananda Bharati* (the landmark 1973 ruling from which came the Basic Structure Doctrine). This is huge, given that *Kesavananda Bharati* is basically the locus of Indian constitutional law. The reason this case is so big: it determines whether you can publish something on the web and not be arrested. Until this ruling, if you posted something "offensive" on Facebook or Twitter all the police had to do was throw you in jail. And now they cannot do that — at least not through Section 66A.

The ruling shields ordinary people — bloggers, activists, journalists, and everyday citizens using social media. What that means is it has meant a farmer in a village can tweet government corruption without being arrested. It implies a student can criticize a politician meme from their dorm and not get arrested for it. In other words, a journalist can publish an online commentary critical of him and will not be prosecuted under this legislation. No, the internet is the freest medium we've ever had (anyone can talk — not just people with wealth and power), and this ruling defended that.

The flip side — as annoying as it is — is that even after the Supreme Court scrapped Section 66A in 2015, police in many states continue to rely on it. More than 100 people are arrested each year under a law that has been unconstitutional for almost eight years. Few of these types have the funds or stamina to fight it in court. Then they get locked up for weeks or months until a judge finally goes wait, this law doesn't even exist anymore. The Supreme Court did a great job of protecting free speech, but having it mean anything in practice takes real citizens and activists.

What Changed After This Judgment:

The most obvious change? Section 66A is dead. They still try, but you can no longer be arrested under it. The ruling also restricted how much Facebook, Google and Twitter can be held liable for what users post. Before this, platforms were terrified they would get into trouble for anything. Now they are aware that they do not have to delete content unless a

court or the government specifically orders it. Which is why, Instagram and Facebook still run the same way it works today.

It also bolstered the so-called vagueness doctrine, which holds that laws need to be clear and specific. If the words sound like latin and no one a single man understands those terms, it is unconstitutional. More than just Section 66A, this means that any attempted law to restrict speech with terms such as timely will meet the same fate.

But perhaps the most profound change is in the symbolism. It said to the government: You can not create laws at will merely in order shut down criticism. The Court will protect free speech even if the government dislikes what it hears. That's huge for a democracy.

CRITICAL ANALYSIS

This judgment is a landmark victory for freedom of speech in India – likely the largest within the last 10 years. And that is precisely what the Supreme Court then did: It explained correctly that vague laws empowering police to arrest people for simply speaking online cannot survive in a democracy. The Court got that right: when you don't know what is a crime, you shut up¹⁶. That fear is the foe of free expression. Striking down Section 66A the Court made it clear that the government cannot fabricate laws merely to quell any dissent.

The Court also clarified that just because something exists online does not mean you have reduced rights. Actually, it makes the internet even more important for free speech since it's not just rich people or well-funded newspapers who can post something, anyone with a phone can. That voice is not without merit and should be considered because the Court acknowledged that: 1) the internet provides ordinary people with a means of making their voices heard - which is great. It also shielded platforms, such as Facebook and Google from liability for what users post¹⁷, which undergirds the Internet.

What Are the Limitations:

Here is the sad part – Section 66A was struck down in 2015 for being unconstitutional but it remains operational even today¹⁸. Police in different states keep arresting citizen over Facebook posts, WhatsApp messages and tweets. They know they have lost in court but file charges anyway, secure in the knowledge that 90%+ of people do not have the resources or access to take it up with a court. Since 2015, at least 100+ cases were filed after a law that had been dead for years; hundreds were arrested under it.

The Court failed to prevent this also. They quashed Section 66A but gave no order to the police not to put it to use. No police station at the moment was ordered, "don't use this anymore." And when people complain about arrests under Section 66A, courts can take months or years to get around to saying, "hey this law is no longer valid." At that point, the individual has been in prison for weeks or month.

The Court had also upheld Section 69A, which enables the government to take down websites and online content. Although they say there are some safeguards, the entire process

¹⁶ *Supra* note 12

¹⁷ *Supra* note 13

¹⁸ *Supra* note 14

is opaque: no one knows what content has been blocked and¹⁹ who made that decision. That presents yet another problem: being able to ban speech without explanation is still a form of regulating the content people see online.

The Bottom Line:

This judgment is the classic case of good law on paper not working in practice. The consequences, however, are real: It requires the work of citizens and activists and lower courts a lot of it to make that protection count. The Supreme Court defended free speech here as excellently as it is able; but for many people much of the benefit will come in further instances down below. While there is enough gap between what the Court said and what really happens, Section 66A won't die; it will continue to live on in police stations even though it's dead³⁴ in law books.

CONCLUSION

The famous case of *Shreya Singhal v. Union of India* saved free speech on the internet in India. If you take away this judgment, every Facebook post, tweet or WhatsApp message could have been a reason to arrest someone merely because it has offended someone with power. The Supreme Court then did its duty, upholding our most sacred right: the free expression of speech, even when uncomfortable to the government.

The Court obviously told all perverse laws belong to a democracy. It is basically impossible to know what's illegal, and so you just stop talking back. The exact opposite of what free speech is supposed to be. The Court emerged to state that the average citizen would be heard and not suffer helplessness in the hands of an officer merely not liking a post made by someone giving ordinary people a voice by dealing with Section 66A harshly, along with reading down Section 79 as well as proclaiming that the internet needs stringent protection for free speech.

And the sad truth: Section 66A is still operational despite being unconstitutional. The data is current through October of 2023 and police in some states still arrest people over social media posts, betting that the vast majority won't contest them in court. But the ruling remain extant: it's still law and whenever challenged the courts have to remind everyone, no you see this law doesn't exist anymore,

This case is also a reminder that winning in court is only half the battle. The other is ensuring what the Court said happens on the ground. And until police stop relying on dead laws and citizens know their rights, the schism between this judgment and reality will continue to exist. Yet *Shreya Singhal* is the bedrock of free speech in a digital age India and that is certainly worth defending.

¹⁹ *Supra* note 14

