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SHREYA SINGHAL & ORS. V. UNION OF INDIA – FREEDOM OF SPEECH AND THE INTERNET

Yashasvi Nagar

[(2015) 5 SCC1]

Court & Bench : Supreme Court Of India, Criminal/Civil Original Jurisdiction Writ Petition (Criminal) No.167 Of 2012, Division Bench comprising Hon'ble Mr. Justice J. Chelameswar and Hon'ble Mr. Justice Rohinton Fali Nariman.

DATE OF JUDGMENT: 24 March 2015

INTRODUCTION

The internet expanded scope for freedom of speech by enabling individuals to express opinions, criticise public authorities, participate in political discussions, and reach a large audience without relying on traditional media platforms. This wider reach also created new legal concerns. Governments had to deal with fake news, online bullying, and harmful content. At the same time, trying to control what people say online raised concerns about excessive state control stopping people from speaking out against. This was the context in which Section 66A of the Information Technology Act, 2000 was questioned. The provision criminalised messages that were described as "grossly offensive", "menacing", or capable of causing annoyance, inconvenience, or ill will. The judgment in Shreya Singhal's caseⁱ is celebrated as a landmark for internet free speech. The phrase "open-ended" and "chilling effect" from the judgment has been

widely quoted by judges and scholars. As the case became another example of the controversy surrounding the power of the police to arrest and invoke provisions of law in cases where the freedom of speech and expression was involved, major media outlets hailed it as a victory for netizens.

FACTUAL BACKGROUND AND TIMELINE

Parliament had introduced Section 66A into the Information Technology Act, 2000 (hereinafter referred to as 'IT Act') through the Information Technology (Amendment) Act, 2008. The provision criminalized the transmission of information through a communication device if such information was considered "grossly offensive," "menacing," or was sent for the purpose of causing "annoyance," "inconvenience," "danger," "obstruction," "insult," "injury," "criminal intimidation," "enmity," "hatred," or "ill will." The offence was punishable with imprisonment extending up to three years.

On November 2012, after the demise of Bal Thackeray, the founding member of the Shiv Sena, Mumbai observed a shutdown. Shaheen Dhada and Rinu Srinivasan, two young women, were arrested by the Mumbai Police for posting comment about the bandh on Facebook along with giving a "like" to this post. The arrest of these girls under Section 66A generated nationwide criticism because the speech involved neither violence nor public disorder, yet attracted criminal prosecution.

A constitutional petitionⁱⁱ was filed before Supreme court by a law student Shreya Singhal joining others, challenging the validity of section 66A, 69A & 79. They argued it was unconstitutionally vague and overbroad. The Government defended 66A on grounds of legislative wisdom and presumption of validity.

As a precursor, in February 2013, the Supreme Court issued an interim orderⁱⁱⁱ that stopped arrests under 66A without high-level approval. After full hearings, the Court issued its final judgment on March 24, 2015. Section 66A had been invoked in dozens of cases against social media users for "annoying" or "menacing" posts. In this case, the petitioners described how "a

large number of innocent persons have been booked” under 66A for speech that was at most offensive or annoying. The lack of any clear definition meant ordinary citizens could not know what speech was criminal: “What may be offensive to one may not be offensive to another,” noted the Court. The petitioners framed the legal question as whether these vague prohibitions fall outside Article 19(2)’s specified exceptions.

LEGAL ISSUES

- Is **Section 66A** of the IT Act constitutional under article 19?
- Constitutionality of **Section 69A (Blocking Power)**
- Is the Section in violation of **Article 14** of Constitution?
- Validity of **Section 79 (Intermediary Liability)**
- Validity of **Kerala Police Act, 1960 – Section 118(d)**

ANALYSIS OF ARGUMENTS

Petitioners’ Case: Counsel for the petitioners focused on Article 19(1)(a) (free speech). They pointed out that none of the many terms in Sec 66A^{iv} (e.g. “annoyance”, “inconvenience”, “ill will”) fall within Article 19(2)’s list of interests. In practice, 66A ensnared vast amounts of protected speech: as the Court noted, it would criminalize “*any opinion on any subject... [even] a dissenting view*”^v. The petitioners also stressed vagueness: words like “grossly offensive” or “persistently” are not defined, so ordinary people and law enforcement cannot know the boundary of lawful speech^{vi}. This makes enforcement arbitrary (“as whimsical as they like”^{vii}). They warned of a chilling effect^{viii} – journalists and citizens will self-censor to avoid these unpredictable crimes. On Article 14, the petitioners contended there was no rational basis for stricter punishment on the internet. Using a special statute for internet speech created a distinction (internet vs other media) without an intelligible differentia. They also argued procedural unreasonableness: Sec 66A bypassed safeguards (like CrPC ss.95–96 or sanction requirements) that apply to analogous offenses.

Government’s Case: The Attorney General (and later the Solicitor General) defended the statute’s validity. They invoked the presumption of constitutionality: courts should uphold laws

unless they clearly infringe fundamental rights. The legislature argued it was best placed to understand citizens' needs and to make new laws. They urged the Court to construe 66A in a narrow way ("read into or read down provisions" as needed). The government admitted the terms of 66A were broad, but said vagueness alone should not void a law. A key point was that the arrest of innocentss did not by itself render 66A unconstitutional, given the law's alleged general purpose. Ultimately, however, the Court found these assurances insufficient. Even applying every interpretive tool, Sec 66A's terms could not be cured. The idea that 66A could be limited to the Article 19(2) purposes was belied by its language. The judges rejected the notion that enforcement practice or government promises could save an overbroad law.^{ix}

JUDGMENT AND JUDICIAL REASONING

Chiefly, The Court examined the text and scope of 66A against precedent. It reviewed landmark free-speech cases (Romesh Thappar v. Madras, Sakal Papers, etc.) and U.S./UK analogues . Two rationales guided the decision:

- Article 19(2) Content: Article 19(2) lists eight topics (sovereignty, security, public order, decency, etc.) on which speech may be restricted. 66A's proscribed harms ("annoyance, inconvenience, ill-will") do not correspond to any of these categories. Nor is there any statutory requirement linking a prosecution to those legitimate grounds. Hence 66A's reach clearly exceeds any "reasonable restriction" allowed^x. The Court cited previous cases (Chintaman Rao) to say that a law permitting censorship without fitting Article 19(2) must fail.
- Vagueness and Overbreadth: The Court found 66A unconstitutional on standard "void-for vagueness" grounds. In long analysis^{xi}, it compared 66A to other penal that use similar words in defined ways^{xii}. Unlike those, 66A lacked any clear limiting context. For instance, Section 294 punishes obscenity causing annoyance in public, which has narrow boundaries; under 66A "annoyance" could be to any person anywhere, with no act element. Each word in 66A ("offensive", "inconvenience", "cruelty") could vary by subjective view. Even frequency had no demarcation. Such indeterminacy meant citizens had no fair warning, and any opinion dissenting from current mores could be prosecuted.

The Court thus held 66A to be void for vagueness, a doctrine meant to protect free discourse.

Because of these dual defects, the Court did not hesitate. In its concluding paragraph on Article 19, it explicitly held “no part of Section 66A is severable and the provision as a whole must be declared unconstitutional”^{xiii}. The Court then turned to other issues. It upheld Section 69A and the blocking rules^{xiv} as a legitimate exercise of executive power with safeguards. It also upholding Section 79 but clarified its scope. On Article 14, as noted, it agreed that the internet medium justified different treatment, so it rejected the equality challenge. Finally, in disposing ancillary petitions, the Court struck down Kerala’s Sec 118(d)^{xv} by applying the same vagueness reasoning. It separately decided that the Kerala Act fell within state legislative power, but that procedure is ancillary to the free-speech point.

OBSERVATION

The government’s subsequent Digital India initiatives often stress due process partly in response to this judgment. The case remains cited in discussions of how to balance hate speech and free expression online. Internationally, Shreya Singhal case is sometimes compared to First Amendment jurisprudence (e.g. *Brandenburg v. Ohio*), as it echoes the idea that vague speech laws are unacceptable. However, new challenges remain. Since 2015, India has grappled with misinformation and hate speech on social media. The IT Act’s Section 69A and other provisions (like Section 196 BNS which is on promoting enmity) have been used more frequently, raising new questions about overbreadth. Courts continue to rely on Singhal’s principles when evaluating these laws. There is also debate on how Singhal affects private censorship by platforms (some legal academics ask if “chilling effect” limits how social media moderate content).

In short, Singhal’s case deepened India’s commitment to free internet speech. It underscored that laws targeting online content must be narrowly tailored. Its reasoning remains a touchstone for any subsequent push to regulate online speech.

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

ⁱⁱ WritPetition(Crl) No.167/2012 U/A 32 of Constitution of India.

ⁱⁱⁱ Shreya Singhal v Union of India, (2013) 12 SCC 73.

^{iv} Information Technology Act, 2000, s. 66A; struck down by *Shreya Singhal v Union of India*, (2015) 5 SCC 1.

^v Shreya Singhal v Union of India, (2015) 5 SCC 1, para 83.

^{vi} Id., paras 50-76.

^{vii} Ibid., para 5.

^{viii} Ibid., paras 87-90.

^{ix} Ibid., para 91.

^x Ibid., paras 18-96.

^{xi} Ibid., paras 69-75.

^{xii} In the [Indian Penal Code](#), a number of the expressions that occur in [Section 66A](#) occur in Section 268 Public nuisance.

^{xiii} SUPREME COURT REPORTS [2015] 5 S.C.R.

^{xiv} Information Technology Act, 2000, s. 69A.

^{xv} Kerala Police Act, 1960, s. 118(d).