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SHREYA SINGHAL V. UNION OF INDIA (2015)

- *Hiba Ilyas*

INTRODUCTION

As India added section 66A to its digital criminal statute via the Information Technology (Amendment) Act of 2008, it criminalised electronic speech deemed "grossly offensive," "menacing," or of the nature to "cause annoyance," undefined concepts subject to executive whims. The resulting tension with the Indian Constitution was glaring in widely reported arrests: a woman arrested for "liking" a Facebook post, two women in Palghar prosecuted for "offending" an all-party strike via Facebook comments and a cartoonist arrested for satirical content; these are indicative that section 66A, far from protecting the populace from cyber offences, was an arm of the executive for terrorising legitimate dissent.

Against this backdrop, Shreya Singhal, a law student, filed a writ petition before the Supreme Court of India under Article 32 of the Constitution of India, leading to the most significant legal engagement with digital constitutionalism in India. The judgment pronounced by Justice J. Chelameswar and Justice R.F. Nariman in March 2015 was more than an adjudication of statutory invalidity- it provided India with the charter of its digital civil liberties by re-aligning state powers over online expression and recalibrating intermediaries' liability frameworks.

STATEMENT OF FACTS

Petitions dispute three associated parts of the Information Technology Act regarding their compatibility with the First Amendment rights granted by the Constitution: Section 66A; Section 69A in conjunction with the Information Technology (Procedure and Safeguards for Blocking of Access to Information by Public) Rules, 2009; and Section 79 in conjunction with Rule 3(4) of the Information Technology (Intermediaries Guidelines) Rules, 2011. The

petitioners claim these laws jointly provide for state-sponsored censorship in a manner that is contrary to Part III of the Constitution.

The first legal challenge involves Section 66A being inconsistent with Articles 19(1)(a) and 19(2) of the Constitution. The fact that the statute makes it a crime to simply "annoy" someone does not relate in any way to any of the eight potential grounds for constitutional limitations on expression found in Article 19(2) (public order, national security and incitement to commit a criminal act, among others). As such, it is contended that the law criminalises protected speech under the Constitution.

The second issue is far more doctrinaire and deals with the void for vagueness: ambiguously defined terms such as "grossly offensive" give the police unfettered discretion to use the law as a weapon against political dissent, which has occurred historically.

The third issue relates to the liability of intermediaries under Section 79. This liability emerges under Rule 3(4), which obligates intermediary platforms to remove contested material when private complaints are made against that material, thus enlisting private companies in a state censorship effort without reviewing the validity of the private complaints against the material being censored.

ARGUMENTS ADVANCED BY THE PARTIES

The petitioners established their constitutional argument on four pillars: first, that Section 66A was overbroad because it criminalised large amounts of protected spoken word (speech that could be characterised as satire and/or critique) that were much greater than the statutory intent; secondly, that Section 66A was vague because the words "offensive" and "annoying" did not give individuals a fair warning of what was prohibited, which would render it void for vagueness under settled law; thirdly, that directly annoying the receiver of the speech was not a constitutionally protected injury and therefore not a legitimate basis for prohibiting expression based on an administrative definition; and fourthly, that the existence of continued overbroad criminal statutes will require significant self-censored speech from a wide number of individuals, resulting in an ongoing, systemic injury to democratic discourse that is far beyond the actual intent of parliament in creating the offending legislation.

The Union of India defended Section 66A on multiple bases. They relied on the plenary power of Parliament to enact laws regarding cyberspace. They argued that a presumption of

constitutionality applies in favour of democratically formed laws and that since the internet is a totally different form of medium in that it allows people to be anonymous, to spread information quickly and to reach a larger audience than in traditional media, it justifies giving Parliament greater powers to regulate than would otherwise be allowed. On intermediary liability, the Union argued that platforms have reasonable accountability for the harmful content that they host, and private takedown mechanisms afford this framework.

DISSECTING THE RATIO DECIDENDI: THE JUDICIAL MECHANISMS

The Supreme Court began by demarcating between three classes of speech: discussion, advocacy and incitement. The Bench, citing *Superintendent, Central Prison v. Ram Manohar Lohia* AIR 1960 SC 633, stated that the State's right to restrict speech under Article 19(2) is invoked only when expression moves beyond discussion or advocacy to instigate direct and imminent lawless action. Since S 66A criminalized mere subjectively caused annoyance, it lay entirely within constitutionally protected territory, being reinforced by the 'spark in a powder keg' test of *Arup Bhuyan v. State of Assam* (2011) 3 SCC 377, requiring that there must be a proximate cause for public disorder which directly comes from speech, and not from prior sensitivities of the audience.

Accordingly, Section 66A was struck down independently: First, based on it lacking any nexus whatsoever with any permissible head of restriction under Article 19(2); Second, on the basis that it is a constitutionally void provision because of vagueness; this imposed criminal liability through language that was so vague and obscure, that there was no possibility of non-arbitrary application; and it was independently recognized to be a constitutional violation in so far as its 'chilling effect'-compelling citizens to refrain from engaging in lawful activity for fear of the vagueness induced prosecutions-caused them to silence their speech in a constitutionally impermissible way. Section 69A was upheld. The Court ruled that the 2009 Blocking Rules did provide sufficient institutional checks and balances with authorization by a senior executive, providing the impacted intermediary a hearing and a review by a Committee of Officials. With respect to Section 79, the Court interpreted "actual knowledge" under Section 79(3)(b) and Rule 3(4) as knowledge conveyed either by a court order or a notification by the government rather than a privately triggered mechanism.

DIGITAL LIBERTY AND PLATFORM OPERATIONS: A MANAGERIAL ANALYSIS

For technology intermediaries and user-generated content platforms, the reading down of Section 79 had far-reaching practical implications. Before the judgment, Rule 3(4) produced significant compliance friction: because the legal exposure for hosting any controversial content was entirely ambiguous, it was rational for platforms to "over-censor" to avoid this exposure. This model of precautionary censorship has demonstrably high costs of operation, stilted legitimate user expression, and the incentive for private actors - often competing commercial concerns - to employ take-down notices as tools for strategic advantage, instead of as protective devices.

The reading down of Section 79, in effect, uncoupled intermediary liability from individual dispute and linked it to formal State action. Consequently, platforms now feel free to host user-generated content without an attendant, pervasive sense of liability in response to informal notices, and are now able to redirect their resources to true legal compliance requirements. In the context of the nascent Indian digital startup sector, this legal certainty was vital for investor confidence and scalable growth in sectors ranging from e-commerce to social networking to collaborative platforms. However, the later promulgation of the IT Rules, 2021, establishes an altogether more activist regime of compliance, including a mandate for grievance redressal and content tracing, which complicates its interaction with the safer harbour provisions required by contemporary corporate compliance programs.

CONCLUSION

Shreya Singhal v. Union of India may be India's digital Magna Carta, which elevates constitutional principle over executive control of speech online and declares freedom of dissent, criticism, and satire a constitutional right, not a privilege conferred by statute. However, its tangible benefits continue to be hobbled by the existence of the "Ghost of Section 66A," a fact that, even as late as 2019, the Internet Freedom Foundation reported when the state police in numerous states continued filing FIRs under Section 66A long after its unconstitutionality had been struck down, demonstrating a structural problem of judicial and institutional non-coordination.

Addressing this is a three-part project. Law enforcement needs to be provided with mandatory training with the explicit information that Section 66A has no legal validity and is wholly unconstitutional. Compliance offices at firms need to implement the legal intelligence mechanisms required to react in real-time to wrongful demands being made. Parliament need

to exercise restraint and not re-introduce the ambiguity and broadness of cyber speech offences by means of alternative provisions and legislating in a constitutionally appropriate manner with the necessary level of precision and proportionality. It is only through the combination of judicial prudence, institutional accountability and restrained law-making that the transformative intent of this significant judgment will become a lived reality for all digital citizens.