



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

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

FREEDOM OF SPEECH AND EXPRESSION IN THE DIGITAL AGE :

SHREYA SINGHAL V UNION OF INDIA

~SHREYA SINGH

INTRODUCTION

The growth of the internet and technology today has transformed public discourse. While the internet has significantly expanded freedom of speech and expression, it has also created challenges regarding the regulation of online content. The State has a legitimate interest in maintaining public order and preventing misuse of technology ; however any restriction imposed should be justified and be in line with the constitutional framework. Balancing these competing interests has become an important constitutional concern.

Against this backdrop, *Shreya Singhal v. Union of India* (2015)¹ emerged as a landmark judgment on digital free speech. The case primarily challenged the legal validity of Section 66A of the Information Technology Act, 2000 a clause that criminalised the transmission of certain types of online messages. Due to its vague and ambiguous language, Section 66A attracted widespread criticism for its potential to suppress legitimate criticism, political dissent and public debate. The Supreme Court consequently struck down Section 66A as unconstitutional for violating Article 19(1)(a).

The judgement assumes importance as it underlined the role of free speech, open public discussions and the existence of different political opinions in the development of a state. It also reaffirmed that the freedom of speech and expression guaranteed under Article 19(1)(a)

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

extends equally to online communication while clarifying the limits of permissible restrictions under Article 19(2).

FACTS OF THE CASE

The Information Technology Act came into force on 17 October 2000. Originally, Section 66A was not a part of the act but was inserted through the Information Technology Amendment, 2008 which came into force in 2009. The rapid growth of social media, emails, instant messaging and cybercrime made the original Act inadequate to deal with emerging forms of cyber misconduct. The Section 66A criminalized the sending of certain electronic communications, including messages that were "grossly offensive" or of a "menacing character", false information sent to cause annoyance, inconvenience, danger, insult, injury, hatred, or ill will, emails sent to deceive or mislead recipients about the sender's identity. The government's objective was to curb misuse of digital communication and protect individuals from online abuse.

In 2012, the police arrested two women Shaheen Dhada and Renu Srinivasan under the Section 66A of the Information Technology Act, 2000 , for posting allegedly offensive comments on facebook. Shaheen questioned the shutdown in Mumbai following the death of a political leader, while Renu merely liked the post. The arrests sparked widespread criticism regarding freedom of speech and expression . Shreya Singhal ², then a law student, filed a writ petition under Article 32 before the Supreme Court in 2012, challenging Section 66A as violative of Article 19(1)(a). . The Supreme Court thereafter, clubbed together similar petitions challenging Section 66A. The principal issue before the Court was whether Section 66A was constitutionally valid in light of Article 19(1)(a).

ISSUES OF THE CASE

The Supreme Court was called upon to determine the following issues:

1. Whether Section 66A of the Information Technology Act, 2000 violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.
2. Whether the restrictions imposed by Section 66A fell within any of the permissible grounds of reasonable restrictions under Article 19(2) of the Constitution.

² *Shreya Singhal*, (2015) 5 SCC 1

3. Whether the terms used in Section 66A, such as "grossly offensive", "annoyance", and "inconvenience", were so vague, overbroad and lacking a standard definition that they rendered the provision unconstitutional.

ARGUMENTS OF THE PARTIES

PETITIONERS

1. The petitioners contended that Section 66A violated Article 19(1)(a) and was not protected by any of the grounds under Article 19(2).
2. They argued that expressions such as "annoyance", "inconvenience", "hatred" and "ill-will" fell outside Article 19(2) and were undefined, resulting in arbitrary application and the criminalisation of innocent persons.
3. They further submitted that the provision created a chilling effect by discouraging legitimate opinions and political dissent online.
4. They further argued that Section 66A violated Articles 14 and 21 by discriminating against internet users without any intelligible difference.

RESPONDENT (Government)

1. The Additional Solicitor General defended the constitutionality of Section 66A by stating that courts should only interfere when the statute clearly violates the rights guaranteed under part III of the constitution.
2. The Government argued that the internet had a far greater reach than traditional media and therefore posed a greater risk of public disorder and criminal activity.
3. It was further argued that mere misuse of a provision could not render it unconstitutional and should instead be addressed through proper enforcement.

JUDGEMENT AND COURT'S REASONING

The court noted that freedom of speech and expression is a cardinal value under our constitutional scheme. It reasoned that Section 66A imposed restrictions that extended far beyond what Article 19(2) permits. Consequently, the court held that the unreasonable restrictions of the provision thereby rendered it unconstitutional.

The court further observed that free speech and expression consists of three distinct stages - discussion, advocacy and incitement. Mere advocacy and discussion online cannot be criminalized. It is only when the speech reaches the stage of incitement that the State may curtail freedom of speech and expression. Relying upon the reasoning associated with Justice Brandeis in the case of *Whitney V. California 1927*³, the court underlined that there should be enough ground to believe that the evil to be prevented is a serious one. Applying this principle to the arrest of Shaheen Dhada and Renu Srinivasan, the Court noted that the impugned Facebook post and the act of “liking” it amounted merely to an exchange of opinions and did not disclose any imminent incitement to violence or public disorder.

The court next addressed the vagueness of the provision. Terms like “offensive” , “inconvenience” , “annoyance” or “persistently” lack clear definitions and are incapable of precise interpretation. Owing to their subjective nature and the absence of an objective standard, they permit arbitrary enforcement. . Referring to *Chambers v. Director of Public Prosecutions*, ⁴The Court reiterated that criminal liability cannot rest upon such subjective and uncertain expressions. Consequently, the Court held that Section 66A was unconstitutional as it could criminalise even protected speech which can have a chilling effect on the exercise of the rights of freedom of speech and expression.

The Court thereafter considered the petitioners' challenge under Article 14 of the Constitution. The petitioners had argued that Section 66A discriminated against internet users by subjecting them to criminal liability for acts which, if committed through other modes of communication, would not attract similar consequences. However, having already held that Section 66A violated Article 19(1)(a) , the Court held that it was unnecessary to separately adjudicate upon the challenge under Article 14. The provision was therefore struck down solely on the ground that it imposed unconstitutional restrictions on the freedom of speech and expression.

CRITICAL ANALYSIS

The judgement in *Shreya Singhal v. The Union of India* reestablished the importance of free speech and expression in India’s digital age. It also reaffirmed democratic values by holding that even in the online context, free speech cannot be curtailed except by reasonable restrictions permitted under the Constitution.

³ *Whitney v. California*, 274 U.S. 357 (1927)

⁴ *Chambers v. Director of Public Prosecutions*, [2012] EWHC 2157 (Admin).

The Judiciary plays an important role in recognising the dangers posed by vague criminal laws. The Court rightly observed that expressions such as "grossly offensive", "annoyance" and "inconvenience" are subjective and lack a definite legal standard, thereby allowing arbitrary and inconsistent application of the law. Such uncertainty creates a chilling effect, discouraging citizens from freely expressing their opinions for fear of criminal prosecution. Another important contribution of the judgment is its interpretation of Article 19. By distinguishing between discussion, advocacy and incitement, the Court clarified that only speech amounting to incitement may be restricted, while mere discussion or advocacy, however unpopular, remains constitutionally protected.

However, the judgment has certain limitations. While striking down Section 66A was necessary, the absence of precise laws has continued to raise concerns regarding the regulation of genuinely harmful online speech. Individuals may sometimes justify abusive or offensive remarks by claiming that such expressions are merely subjective opinions. Furthermore, despite Section 66A being declared unconstitutional, reports of its continued invocation in subsequent years indicate that judicial decisions alone cannot guarantee effective implementation. This demonstrates that alongside constitutional safeguards, proper awareness and enforcement are equally necessary to ensure meaningful protection of free speech.

CONCLUSION

The main issue before the Supreme Court was whether Section 66A of the Information Technology Act, 2000 imposed unconstitutional restrictions on the fundamental right to freedom of speech and expression. The Court held that the provision was violative of Article 19(1)(a) and could not be sustained under Article 19(2) due to its vague and overbroad nature. The judgment continues to hold relevance as it reaffirmed that free speech remains the foundation of a democratic society. As Justice Brandeis observed, "Punishment creates fear, fear creates repression, repression creates hatred and hatred menaces stable government."⁵ By upholding this principle, *Shreya Singhal*⁶ remains a landmark judgment that continues to reinforce the importance of free speech and democratic values in India.

⁵ *Whitney v. California*, 274 U.S. 357, 375–76 (1927) (Brandeis, J., concurring).

⁶ *Shreya Singhal*, (2015) 5 SCC