
VAGUENESS, OVERBROAD POWERS & THE CHILLING EFFECT: SECTION 66A VS ARTICLE 19(1)(A) IN SHREYA SINGHAL V. UNION OF INDIA

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ABSTRACT

In the case of *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the IT Act, 2000, as unconstitutional, as it violated the fundamental right provided under Article 19(1) (a) of the Constitution of India, which guarantees freedom of speech and expression. The terms mentioned under Section 66A, such as “grossly offensive”, “menacing”, “annoyance”, “inconvenience”, etc, are vague, overbroad, and have created a chilling effect on freedom of speech and expression. And how this Section has crossed the limitations set by Article 19(2) of the Constitution of India.

INTRODUCTION

Shreya Singhal v. Union of India is a landmark judgment delivered in 2015 by the Supreme Court of India, which held Section 66A of the IT Act, 2000, as unconstitutional¹.

The case was filed against Section 66A of the IT Act, 2000, which criminalises sending offensive messages through computers or other communication devices. The petitioner in this case, Shreya Singhal, filed a PIL before the Supreme Court by challenging Section 66 A of the IT Act, 2000 on the grounds of being vague, overbroad, chilling effect and violative of the fundamental right to freedom of speech and expression enshrined under Article 19(1)(a) of the Indian Constitution.

ARTICLE 19(1)(a) OF THE INDIAN CONSTITUTION

This Article grants all citizens the freedom to speech and expression, which allows them to

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

express their thoughts, opinions, and ideas through various means such as words, writing, print, pictures, or any other form of communication, irrespective of platforms. This fundamental right is very important for individual fulfilment, for the discovery of truth, public participation in decision making, and to ensure the balance between society stability and change. It is subject to reasonable restrictions under Article 19(2) of the Indian Constitution².

ARTICLE 19(2) OF THE INDIAN CONSTITUTION

This Article imposes reasonable restrictions on the fundamental right of freedom of speech and expression, which is stated under Article 19(1)(a). These restrictions are laid down to protect national interests like the sovereignty and integrity of India, the security of the state, and friendly relations with foreign states. These restrictions are laid down to maintain public order, decency, and morality, as well as for preventing contempt of court, defamation, and incitement to an offence³.

SECTION 66 A OF IT ACT, 2000

This Section is about Punishment for sending offensive messages through communication services, etc.

Essentials of this section:

1. The police officer has to check whether the information sent in the message is qualified as offensive or not.
2. To be arrested under Section 66A, the information in the message must contain the following elements: -
 - i) Grossly Offensive
 - ii) The information must be false and meant for the purpose of causing annoyance, inconvenience, danger, obstruction, or insult, injury, criminal intimidation, enmity, hatred, or ill will.

² INDIA CONST. art.19(1)(a)

³ INDIA CONST. art.19(2)

- iii) The information is meant to deceive or mislead the recipient about the origin of such messages.

3. The offence under this section was punishable with a three-year jail term and a fine⁴.

PROBLEM WITH SECTION 66A OF IT ACT,2000 AND HOW IT VIOLATED ARTICLE 19(1)(a) OF THE INDIAN CONSTITUTION

- The grounds mentioned under the section are vague and overbroad, due to which it has become difficult for the law enforcement authorities and for the offender to know the elements of the offence. The words have a very wide connotation and are open to a wide variety of interpretations.
- This has been subjective, because what might be offensive for one person may not be offensive for another.
- It has violated Article 19(1)(a), the right to freedom of speech and expression and outlawed all political criticism on social media platforms.
- It crossed the reasonable restrictions set by Article 19(2).
- It became a weapon for state governments and political leaders to curtail the voice of opposition. Citizens were not able to freely express their views for the benefit of society.

FACTS OF THE CASE

- Two girls were arrested in Mumbai in 2012 for liking and posting comments on Facebook criticising the bandh (shutdown) of the city for the funeral of a political leader.
- These girls were charged with offences under Section 66A of the IT Act, 2000.
- The arrest of the girls has created widespread anger among citizens, with many

⁴ The Information Technology (Amendment) Act, 2008, Act No. 10 of 2009, § 66A, Information Technology Act, 2000 (India)

wishing for Section 66A to be repealed.

- Shreya Singhal, a law student, filed a PIL before the Supreme Court of India, challenging the constitutionality of Section 66A of the IT Act, 2000. She argued that Section 66A has restricted freedom of speech expression and violated the fundamental rights provided under Article 19(1)(a) of the Indian Constitution. And also, she contended that the law was vague, ambiguous, and subject to abuse, as it conferred subjective powers on the police to interpret Section 66A.

ISSUES OF THE CASE

- i) Whether Section 66A of the IT Act, 2000 has violated the freedom of speech and expression guaranteed under Article 19(1)(a) of the India Constitution?
- ii) Whether the grounds mentioned in Section 66A of the IT Act are vague and overbroad and therefore liable to be repealed?
- iii) Whether Section 66A of the IT Act created a chilling effect on freedom of speech and expression?

JUDGEMENT

- The Supreme Court has declared Section 66A unconstitutional because it infringes on Article 19(1)(a). This section lacks procedural safeguards.
- The Court held that the restrictions under Article 19(2) must be reasonable, clear and relate to one of the grounds mentioned in Article 19(2); this section does not meet that requirement.
- Section 66A of the IT Act is vague and overbroad as it fails to define its grounds (terms), so ordinary people cannot understand what constitutes an offence or prohibited act.
- The enforcement of Section 66A depends too much on discretion, which creates chances for misuse and arbitrary arrest, and has a chilling effect on freedom of speech and expression.

- Section 66A doesn't draw a clear line and criminalises speech that should be protected.
- The Court emphasised that any restriction on free expression must be closely tailored to legitimate governmental objectives and must be clear and proportionate. It is not enough for laws that violate constitutional rights to just rely on general provisions that leave enforcement discretion.

CONCLUSION

Consequently, even though Section 66A of the IT Act was designed to shield people and society from cybercrimes, its ambiguity and potential for abuse caused it to be abolished because it was viewed as a breach of the fundamental right to freedom of speech and expression guaranteed by the Indian Constitution.

The court ruled that section 66A of the IT Act was unconstitutional, giving citizens more freedom to share their beliefs and thoughts online without fear of prosecution. The case also demonstrated the need of striking a balance between free expression and the need to protect people from hate speech, cyberbullying, and other types of internet harassment.

The decision also emphasized the need of striking a balance between the state's interest in controlling damaging speech and the individual's freedom to dissent, critique, or express unpopular or offensive ideas. Discomfort, insult, or irritation cannot warrant criminal punishment unless speech is related to incitement to violence or physical damage.

For India's digital liberties and fundamental freedoms, the repeal of Section 66A is a historic win. Going ahead, the emphasis should be on developing well-balanced laws that safeguard fundamental rights and cybersecurity while guaranteeing that court rulings are properly carried out through systems like the FASTER system, which allows court orders to be disseminated instantly.

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