

## **STRIKING DOWN SECTION 66A OF IT ACT - A LAW THAT HIT AT THE ROOT OF LIBERTY AND FREEDOM OF EXPRESSION**

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### **ABSTRACT**

In a major decision, the Supreme Court struck down Information Technology Act of 2000 section 66A. This section of the law said that those who uploaded offensive content to the internet could face jail time. This decision upheld the right to free expression. If you send disrespectful messages through a computer or other communication equipment, such as a cell phone or tablet, you face up to three years in prison and a fine, according to Section 66A.

In recent years, authorities have frequently detained individuals for providing material through computer or communication device that was, among other things, highly unpleasant or harmful, or that caused annoyance, inconvenience, or obstruction. In a ruling authored by Justice R.F. Nariman on behalf of himself and Justice J. Chelameswar, the Court has ruled that Section 66A is not only imprecise and arbitrary, but it also infringes the right to free speech in an unjust manner.

## **INTRODUCTION**

Section 66A of the IT Act was likely intended to include a wide range of offences that will be referred to in this article as "bad speech" or "bad talk." However, as previously stated, 66A does not define or identify any language that could be termed "foul language." In essence, Section 66A was a censorship statute intended to limit free expression for the eight grounds specified in Article 19(2) of the Constitution –

- (I) security of the State,
- (ii) friendly relation with foreign states,
- (iii) public order,
- (iv) decency
- (v) morality,
- (vi) speech in relation to contempt of court,
- (vii) defamation,
- (viii) incitement to an offence.

Speech is how people express their thoughts and emotions. People have asserted that the right to free speech and expression includes the rights to hold an opinion and to share and receive information.<sup>i</sup> Unfortunately, not everyone accepts all forms of speech. Article 19 of the International Covenant on Civil and Political Rights provides special rights and duties while protecting the right to hold an opinion and freedom of expression, according to this view.

Some of these duties and obligations include respecting the rights and reputations of others, not endangering national security or public order, and not using freedom of speech and expression to violate public health and morality regulations.<sup>ii</sup> It is crucial to highlight that Article 29 of the Universal Declaration of Human Rights provides justifications for limiting the rights it protects. It is stated in the 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs that -

"(2) No one may be prevented from exercising their rights and liberties in excess of what the law allows. In a democratic society, this is to ensure that the rights and liberties of others are respected and that morality, public order, and the general welfare are met.

(3) These rights and liberties cannot be used in opposition to the purposes and ideals of the United Nations.<sup>iii</sup>

Article 19(2) of the Indian constitution explains why there are certain rules. It is important to note that since people have been able to share their opinions on the internet, the right to free speech and expression has received a great deal of attention from judges and legislators around the world, particularly for the reasons outlined in Article 19 of the International Covenant on Civil and Political Rights. In Indian law, the right to free speech and expression on the internet can be understood by examining how the Supreme Court and other High Courts have interpreted Article 19 of the Indian Constitution, which guarantees the fundamental rights to freedom of speech and expression (1)(a).<sup>iv</sup> Therefore, a person's right to free speech and expression on the Internet includes sending mail, messages, or creating written content via blogs, social networking updates, audio-visual information, or still photographs with or without text.

Beg, J. remarked in *Bennett Coleman & Co. & Ors. v. Union of India & Ors.* that freedom of speech and the press is the Ark of the Covenant of Democracy since public criticism is essential for the functioning of democratic institutions.<sup>v</sup>

This Court stated in *S. Khushboo v. Kanniamal & Anr.*, at paragraph 45, that while freedom of speech and expression is not absolute, it is essential because we must be allowed to listen to unpopular ideas. This freedom necessitates the free interchange of ideas and opinions, which is vital to the community as a whole. A well-informed populace is essential for successful government, but a culture of open communication is also crucial for the overall health of society.<sup>vi</sup>

In addition, if we examine section 66A closely, we can see two faults with it. The first is that it is an all-encompassing definition. Second, the word does not indicate the subject matter of the information. In actuality, it refers to the manner in which this type of information is transmitted. Therefore, the petitioners are correct that Section 66A directly impacts the public's right to know.

Every type of information is collected. It may be valuable from a scientific, literary, or artistic standpoint, or it may pertain to current events, or it may be obnoxious or hazardous. People argue that it is improper since this type of information may annoy or disturb some individuals.

Clearly, Section 66A is predicated on the notion that individuals have a right to know and that the Internet is a marketplace of ideas for all types of people.

The requirement that the information be annoying, inconvenient, grossly offensive, etc. demonstrates that there is no distinction between simple discussion or advocacy of a particular point of view, which may be annoying, inconvenient, or grossly offensive to some, and incitement, in which such words lead to a probable connection with public disorder, state security, etc.

The petitioners are correct in stating that Section 66A's creation of an offence for those who use the Internet to annoy or irritate others has a direct impact on the speech and expression rights of Indian citizens. This is due to the fact that the formation of the Section 66A offence directly restricts speech and expression.

The ruling in *Manubhai Shah v. Life Insurance Corp. of India* established that the right to free speech and expression on the Internet includes the freedom to respond.<sup>vii</sup> In accordance with Article 19(2) of the Constitution, the right to free speech and expression may include the ability to respond to critiques. In India, however, the Information Technology Act of 2000 makes it unlawful for individuals to exercise their right to free expression online. Publishing, disseminating, or inducing the publication of obscene information is one of the most prevalent sorts of illegal communication.<sup>viii</sup> Before India achieved freedom, speech restriction was a daily occurrence.

In accordance with Section 5 of the Indian Telegraph Act of 1885, the government may suppress speech by interfering with the transmission of telegraph messages, seizing licenced telegraphs, and intercepting messages. This provision was modified in 1972. In 2008, the Act was amended to include four new criminal offences: voyeurism (Section 66E), publishing, transmitting, or making obscene materials (Section 67), publishing and transmitting sexually explicit materials (Section 67A), and publishing, creating, transmitting, etc. of content depicting children engaging in sexually explicit acts (Section 68). (Chapter 67B) All of these rules and sanctions may fall under the criteria of decency, morality, defamation, and public health, according to Article 19(2) of the Constitution. Notably, no provision was made to include or define other types of online speech that may not be protected, such as hate speech, speech that misleads receivers to aid in financial crimes or identity theft, defamatory speech, extremely racial speech, speech that may cause riots or aid in cyber terrorism, speech that may

harm women's modesty, and speech that may insult or damage a person's reputation. Section 66A was created to include all types of communication that could result in emotional harassment, and it could be invoked at any time, depending on the circumstances. Instead of defining or establishing norms for each independently, this was done. This is why, in the instance of Shreya Singhal, the court ruled that Section 66A was unclear and unlawful.

## **UNION OF INDIA v. SHREYA SINGHAL**

In the important case *Shreya Singhal v. Union of India*, the Supreme Court of India looked at freedom of speech and expression on the internet, as well as what is and is not okay.<sup>ix</sup>

### **FACTS**

- In 2012, after the death of its leader, Bal Thackeray, the Shiv Sena called for a bandh in the whole state of Maharashtra. Shaheen Dhada and Rinu Srinivasan of Thane were taken into custody by the Mumbai Police.<sup>x</sup>
- They are accused of breaking Section 66A of the Information Technology Act, 2000 by putting up offensive and upsetting content on Facebook.
- The women were later set free, and the charges against them were dropped, but the incident got a lot of attention from the media and anger from the public.
- The women filed a Public Interest Litigation (PIL) under Article 32 of the Indian Constitution, arguing that Section 66A was illegal because it went against Article 19 of the Indian Constitution (1)(a).

In the meantime, the Supreme Court of India issued an interim injunction in the case that stopped any more arrests for Section 66A offences without the agreement of top police officials. The Court looked at whether or not the clause in question was legal.

### **QUESTIONS POSTED**

1. Whether Section 66A of IT Act, 2000 is constitutionally valid?

2. Whether Section 66A of IT Act, 2000 is curtailing Freedom of speech and expression under Article 19(1) (a)?
3. Whether Section 66A of IT Act, 2000 is saved under Article 19(2).

## **JUDGEMENT**

The main question for the court was whether Section 66A of the Information Technology Act (ITA) violates Article 19(1)(a) of the Indian Constitution, which says that everyone has the right to freedom of expression, and whether Section 66A is a reasonable restriction under Article 19(1)(a) (2).

After hearing what both sides had to say, the Supreme Court decided that Section 66A of the Indian Taxation Act was illegal for the following reasons. Article 19, Section 66A says that words like "annoyance" and "discomfort" can't be limited in any way (2).

The petitioners said that Section 66A was against the Constitution because its protections against inconvenience, danger, irritation, insult, obstruction, criminal intimidation, injury, or bad will are not covered by Article 19 of the Constitution (2). It also said that the Act should be ruled unconstitutional because it doesn't say exactly what it bans, which Article 19 says has a "chilling effect."

On the other hand, the administration said that the legislature's job is to meet the needs and wants of the people and that the courts can only get involved in the legislative process when a bill clearly goes against the rights in Article III of the Constitution. Also, they said that the provision anno should be ruled unconstitutional because it is vague and hard to understand. A law can't be called unconstitutional unless it violates a fundamental right. It also can't be unconstitutional if it wasn't made randomly and was made through a good legislative system.

Freedom can only be limited when a conversation or a call for change amounts to incitement. The Court looked at discourse, advocacy, and inciting to better understand the right to free speech. According to the Court, just talking about or promoting an issue, no matter how controversial, is an important part of the right, and it can only be limited if the discussion or promotion leads to a crime. Using the same standard for this case, the Court pointed out that Section 66A restricts and limits all forms of Internet communication and doesn't make a

difference between simple discussion or advocacy on an issue and words that are annoying, offensive, or inconvenient and affect public order, state security, etc.

The Court also said that the law doesn't have a close connection to protecting public order, as required by Article 19(2), because sending a message that causes annoyance, insult, ill will, etc., is enough to break Section 66A and make it an offence. The law doesn't make a difference between sending a message to a large group of people or to just one person. It also doesn't say that the message must have a clear tendency to disturb public order.

The Court said that Section 66A does not fall under the defamation exception in Section 19(2) and does not protect people from defamatory statements made on electronic platforms. The court said that the most important part of defamation is "damage to reputation," and that the law doesn't care about defamation as an end goal because it forbids offensive words that might bother or bother someone without hurting their reputation.

The Court pointed out that the government didn't show that the law limits communications that encourage someone to commit a crime because "causing discomfort, danger, annoyance, ill will, danger, etc., or being offensive are not offences at all under the Penal Code."

The court decided that a provision must be thrown out as unreasonable and arbitrary if it is not clear to law-abiding citizens, authorities, or the court, and if there are no reasonable standards for deciding guilt in a provision that makes a crime. The Court decided that the text of Section 66A is unclear because some terms are left undefined and open-ended. This makes it easy for people with bad intentions to take unfair advantage of the law.

In this case, the idea of "severability" was used, and the Court said that only Section 66A was illegal, not the whole law. The part of the act mentioned above was taken out. The court said that Section 66A of the IT Act was unconstitutional because it went against the right to free speech and expression in Article 19(1)(a) of the Indian Constitution.

## **CONCLUSION**

Section 66A of the Information Technology Act of 2000 has been misunderstood and used many times. Freedom of speech and expression is an important part of the law in any democratic country. In the most recent case of Kanhaiya Kumar, the things he said could be

dangerous and cause trouble in public, and he said them in public. In the example given, however, the girl did not plan to do any of the things that are against the law under Section 66A. Instead, she posted a comment on Facebook asking why Mumbai was shut down.

Philosophy of Law needs to be used in a positive way to help people learn more. Section 66A was criticised for not copying Section 66 of the UK Post Office Act of 1953, which was later copied as Section 127 of the Telecommunications Act of 2003. This author was invited to a recent international conference called "Social media for good." At the conference, it was found that new research from around the world in the field of social media is in favour of passing laws to limit hate speech online. Using the good parts of Section 66 A as a starting point for a better law, the courts and legislature may think about following suit.

Freedom of speech and expression is important to the growth and development of our country, and without it, democracy would lose its core.

## **REFERENCES**

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- <sup>i</sup> Sakal Papers (P) Ltd. & Ors. Vs. Union of India, [1962] 3 S.C.R. 842.
- <sup>ii</sup> Article 19 of the International Covenant on Civil and Political Rights. Available at [//treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf)
- <sup>iii</sup> Article 29 of the Universal Declaration of Human rights. Available at <http://www.un.org/en/documents/udhr/>.
- <sup>iv</sup> Romesh Thappar Vs. The State of Madras, 1950 AIR 124, 1950 SCR 594, which established that freedom of speech lay at the foundation of democracy
- <sup>v</sup> Bennett Coleman & Co. & Ors. v. Union of India & Ors., [1973] 2 S.C.R. 757 at 829
- <sup>vi</sup> S. Khushboo v. Kanniamal & Anr., (2010) 5 SCC 600
- <sup>vii</sup> Manubhai Shah Vs. Life Insurance Corp. of India, [1992] 3 SCC 637.
- <sup>viii</sup> S.67 of the erstwhile Information Technology Act, 2000 addressed the publishing of obscene materials under the title 'Publishing of information which is obscene in electronic form information which is obscene in electronic form'.
- <sup>ix</sup> Shreya Singhal v. Union of India, AIR 2015 SC 1523.
- <sup>x</sup> The Information Technology Act, 2000, sec 66A- Punishment for sending offensive messages through communication service, etc.
- Any person who sends, by means of a computer resource or a communication device,—
- (a) any information that is grossly offensive or has menacing character; or
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.