

SHREYA SINGHAL V. UNION OF INDIA: A REINFORCEMENT OF FREEDOM OF SPEECH AND EXPRESSION

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“The freedom of speech is the bulwark of democratic government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It is the mother of all liberties. Freedom of speech plays crucial role in the formation of public opinion on social, political and economic matters.”

-- Dr. B.S. Chauhan & Swatanter Kumar JJ.¹

Introduction

The hon'ble Supreme Court's judgment in the case of *Shreya Singhal v. Union of India*² is a landmark judgment which has reiterated the intent of the constituent assembly, dictating the supremacy of freedom of speech and expression as provided under Article 19 of the Constitution. The judgment of the hon'ble Court has added another dimension to Article 19 and has far reaching implications upon the manner internet is used especially the social networking websites is accessed by millions of Indian Citizens. In a nutshell, the Supreme Court has invalidated section 66A of the Information Technology Act, 2000 [Hereinafter referred as “the I.T. Act, 2000”] thereby giving the citizens to share, comment and post anything according to their whims and fancies on internet especially on social media unless the act of a person does not constitute an offence under other sections of the I.T. Act, 2000 or any other law time being in force.

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¹ In re Ramlila Maidan Incident, (2012) 5 SCC 1.

² *Shreya Singhal v. Union of India*, W.P. (Crl.) 167/2012: 2015 SCC Online SC 248.

This is one of the celebrated judgments of the hon'ble Apex Court delivered by R.F. Nariman & J. Chelamswar JJ. In the backdrop of the instant case, challenging the validity of section 66A [2] of the I.T. Act, 2000, lays innumerable matters of arrest of ordinary citizens upon fair criticism of political leaders upon social media and their consequential harassment at the hands of police.³

Facts

The instant case is a writ petition filed under Article 32 of the Constitution of India pleading that section 66A of the I.T. Act, 2000 is violative of Article 19 (1) (a) of the Constitution. The petition was filed in order to prevent the abuse and chaos caused by section 66A and subsequent to the arrest of the two women who were arrested in Mumbai over their Facebook post.⁴ The instant matter involves a series of writ petitions challenging the validity of section 66A and other sections of the I.T. Act, 2000. It is pertinent to observe that section 66A did not originally form part of the I.T. Act, 2000 and was inserted vide an amendment. The Statement of Objects and Reasons read as: "A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like impersonation known as phishing, identity theft and offensive message through mass communication services. So, penal provisions are required to be induced in the Information Technology Act, 2000, Indian Penal Code, 1860, Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973." In the light of the aforesaid object, section 66A prescribes punishment for three kinds of cyber law offences namely,

- a) Any information that is grossly offensive or of menacing character;
- b) Any information which knowing to be false, but the computer resource is persistently used for the purpose of causing annoyance, inconvenience, danger, insult, hatred, criminal intimidation, etc.; and
- c) Any electronic mail or electronic message with intent to cause annoyance, inconvenience or misled a person as to origin of the message.⁵

³ Mohammad Ali, *Student Arrested for Facebook Post about Azam Khan*, THE HINDU, 18 March 2015 at 1.

⁴ Rashmi Rajput, *Two Women Arrested for Facebook Post on Mumbai Shutdown granted Bail* NDTV, 20 November 2012, At 1.

⁵ K. MANI, A PRACTICAL APPROACH TO CYBER LAWS 165 (1st Ed. 2009).

Issue Raised

Therefore, the primary issue raised by the Petitioners in the instant matter before the hon'ble Apex Court was that aforementioned section 66A was *ultra vires* of the Article 19 (1) (a) of the Constitution as the offence being carved out is not covered under 'reasonable restriction' as provided under Article 19 (2).

Judgment of the Court

The Supreme Court perused the arguments from both sides i.e., the Petitioners as well as the Respondents and delivered a unanimous judgment declaring section 66A of the I.T. Act, 2000 unconstitutional.

Analysis

The judgment of the hon'ble Court is *per curiam* with the precedents and within the scope Article 19 (1) of the Constitution. Moreover, the hon'ble Court has relied upon the prior judgments of the Supreme Court and even discussed the American Jurisprudence to distinguish the notion of liberty in India and the United States of America. It was never a question before the hon'ble Court that whether use of social media and other similar sites and commenting on internet is covered under the expression "freedom of speech and expression". The answer to this question is in affirmation. However, the question to be determined was whether section 66A is protected by Article 19 (2).

1. Doctrine of Reasonable Restriction

Article 19 (2) refers to "reasonable restriction" over the exercise of freedom of speech and expression.⁶ In the case of *Indian Express (Bombay) Private Limited v. Union of India*⁷ the Supreme Court has held that freedom to speech and expression is subject to reasonable restriction under Article 19 (2) and (6) within the ambit of which a valid legislation can be carved out. Moreover, reasonable restriction is subject to judicial review and is not to be determined by the Legislature.⁸

⁶ DR. DURGADAS BASU, COMMENTARY OF THE CONSTITUTION OF INDIA 2256(8th Ed. 2007).

⁷ (1985) 2 SCR 287.

⁸ Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118.

Similarly, in *People's Union for Civil Liberties v. Union of India*⁹ it was held that freedom of speech and expression guaranteed under Article 19 (1) (a) means the right to express one's conviction and opinions freely by word of mouth, printing, picture or in any other manner. Again, in the leading judicial precedents of *LIC v. Manubhai D. Shah*¹⁰ and *Directorate of Film Festivals v. Gaurav Ashwin Jain*¹¹ the Apex Court has observed that exhibition of movies, cinematographs, videos and cable television as a facet of freedom of speech and expression. On the other hand, it has to be observed that section 66A uses general terminology to define an offence such as 'annoyance', or 'inconvenient' etc. without an attempt being made to define the same. At the same time, it defines only the medium through which such information is being disseminated. Thus, no line of difference is being drawn between a general discussion on an issue and posting of information on social media with intent to malign or annoy a person.

Reliance must also be drawn from the constitutional bench judgment in *Virendra v. State of Punjab*¹² wherein it was held: "It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concurring to what may be a burning topic of the day. Our social interest ordinarily demands free propagation and inter-change of views but circumstances may arise when the social interest in public order may require reasonable subordination of social interest in free speech and expression to the needs of our social interest in public order." Internet is a platform for exchange of ideas. With the development of social media, internet is also used for expression of one's ideas and even as a forum for discussion of vivid issues. Thus, based on the *judicial dictum*, the hon'ble Supreme Court has rightly held that section 66A abrogates the freedom of speech and expression of the citizens of India.

2. Doctrine of Vagueness

Another striking aspect of the judgment is that it is first time that hon'ble Supreme Court has invoked the doctrine of vagueness. According to doctrine of vagueness, legislation is struck down as unconstitutional if the language of such statute is too vague or arbitrary.¹³ Similarly, in *Reno, Attorney General of United States v.*

⁹ (1997) 1 SCC 301.

¹⁰ *LIC v. Manubhai D. Shah*, (1992) 3 SCC 637.

¹¹ *Directorate of Film Festivals v. Gaurav Ashwin Jain*, (2007) 4 SCC 737.

¹² *Virendra v. State of Punjab*, 1958 SCR 308.

¹³ *Winters v. People of State of New York*, 92 L. Ed. 840.

*American Civil Liberties Union*¹⁴ the United States Supreme Court struck down the Communications Decency Act, 1996 which dealt with material on internet as the term 'patently offensive' which is similar to the term 'grossly offensive' as used u/s 66A on the ground of being vague. Under the Indian jurisprudence, the Supreme Court relied on *Kartar Singh v. State of Punjab*¹⁵ wherein the vagueness was invoked as ground for unconstitutionality of an Act. The Court held: "It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted that laws should give the person a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague law may trap innocent person by not giving fair warning." Thus, by application of doctrine of vagueness, section 66A can be validly struck down as held by the Supreme Court as none of the terms constituting an offence under the aforesaid section have been defined. This leads to ambiguity due to vagueness in terminology and hence, no clear line of distinction between a prohibited and allowed act can be drawn.

Application to Foreign Nationals: An Ambiguity

Despite the hon'ble Supreme Court has addressed the validity of section 66A from varied perspective. Nevertheless, the Court has struck it down on being violative of Article 19 (1) (a). Thus, the Apex Court erred in its ruling when it did not take into account of foreign nationals accessing internet from India.

In *M.S.M. Sharma v. Sri Krishna Sinha*¹⁶ the Supreme Court held that the fundamental right of freedom of speech and expression is available only to the citizens and therefore, non-citizens cannot claim the benefit of the liberty. Same was held in the case of *Express Newspaper (P) v. Union of India*¹⁷ wherein the court explicitly held that fundamental freedoms under Article 19 are available only to the citizens. This makes the situation more vulnerable to foreign nationals including tourists who use internet in India as section 66A would still be applicable on them. Moreover, the Court has upheld the aforementioned section on the ground of Article 14 but the same time has struck it down on the ground of being vague. Thus, it is unclear

¹⁴ Reno, Attorney General of United States v. American Civil Liberties Union, (1997) 521 U.S. 844.

¹⁵ Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

¹⁶ M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395.

¹⁷ Express Newspaper (P) Ltd. v. Union of India, AIR 1958 SC 578.

whether ‘vague’ amounts to being ‘arbitrary’ resulting in confusion to its application on the foreign nationals.

Conclusion

Thus, this landmark judgment which adds another facet to Article 19 (1) (a) namely, freedom to expression over internet can be summarized in terms of ‘chilling effect’ which strikes at section 66A. In *S. Khushboo v. Kanniamal*¹⁸ the Supreme Court elucidating the doctrine of ‘chilling effect’ held: “In the present case, the substance of controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant’s remarks. If the complainants vehemently disagreed with the appellant’s views, then they should have contested her views through the news media or any other public platform. The law should not be used in manner having ‘chilling effect’ on freedom of speech and expression.”

Thus, information that may be grossly offensive or which causes annoyance is undefined terms which take into its net large number innocent speech. In the case of *the Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*¹⁹ it was held that the doctrine of chilling effect is same irrespective of means of communication including the internet. A person may discuss or advocate by means of writing over social media over the internet which for some may literary work and for others a cause of annoyance. Therefore, section 66A is so widely cast that virtually any opinion may be covered within the net of section 66A.

Henceforth, to conclude relying on the cases of *Kameshwar Prasad v. State of Bihar*²⁰ and *Kedar Nath Singh v. State of Bihar*²¹ and given the fact that the offences created by section 66A is not covered under Article 19 (2), rather is vaguely worded, the Supreme Court rightly declared section 66A of the I.T. Act, 2000 constitutionally invalid.



¹⁸ S. Khushboo v. Kanniamal, (2010) 5 SCC 600.

¹⁹ The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, (1995) 2 SCC 161.

²⁰ Kameshwar Prasad v. State of Bihar, (1962) 3 Supp. SCR 369.

²¹ KedarNath Singh v. State of Bihar, (1962) 2 Supp. SCR 769.