**Case Analysis of Shreya Singhal vs Union of India**

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**Brief facts of the case**

At the outset, it is necessary to state the facts in detail to appreciate the questions which arise for determination before this court In November 2012, a Facebook status update was posted by 21-year-old ShaheenDhada from Palghar, Maharashtra, stating that Mumbai had shut down in fear, rather than out of respect for the funeral procession of Shiv Sena founder Bal Thackeray. One of her friend Rini Srinivasan, and Shaheen who' liked' the status update, were arrested within hours of the update, interrupting the forced calm that enveloped Mumbai after the death of Thackeray. Dhada was charged under the Indian Penal Code Section 295A and the notorious Section 66A of the Information Technology Act, 2000.The arrested girls were released later and it was decided that the criminal cases against them would be dropped, yet their arrests pulled in protest across the country. The crime under section 66A of the IT Act is clear, law enforcement agencies are allowed to detain or prosecute without warrants based on charges brought under the IT Act. This resulted in many highly renowned arrests of people across the country for posting their views and opinions, while Government called them' objectionable content,' but more often these contents were dissenting political views. The Central Government had turned out in January 2013 with an advisory under which no person could be arrested without prior approval from police inspector general or any other senior officer to him/her by the police.

**Facts in Issue**

A written petition is filed by the applicant in the public under Article 32 of the Constitution of India, seeking to make Section 66A, 69A and Section 79 unconstitutional on the basis that the phraseology used in Section 66A, 69A and Section 79 of the IT Act, 2000 is so broad and vague that it is unable to interpret clearly and is probable of getting abused. The petitioner further claims that the words, menacing, disruptive, irritation, nuisance, interference, risk, and insult were not specified in the General Clauses Act, the IT Act, or any other statute, and are therefore susceptible to abuse. Nothing in clause 19(1) shall affect the operation of any existing law, or prevent state from drafting any law so far such law imposes reasonable restriction in the interests of the sovereignty and integrity of India.

**Issues of the case**

1. This writ petition has been filed under article 32 of the Constitution of India raising a question on the very important fundamental right of Speech and Expression which is guaranteed by the constitution under article 19(1)(a).
2. In the said petition the fundamental concern is regarding the validity of Sec 66A of Information Technology Act of 2000 thatwhether Section 66A of ITA violated the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India.Section 66A was added in IT act from an amendment made in 2009. The petitioner’s argument is mainly based upon unconstitutionality of the Sec 66A.
3. Further the petitioner has also questioned the validity or constitutionality of Sec 69A and Sec 79.

**Arguments from Petitioner Side**

1. The petitioner contended that Article 19 is human right articulated under Universal Declaration of Human Right as well as in International Covenant on Civil and Political Rights. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. A democratic government attaches great importance to this freedom because without freedom of speech and expression the appeal to reason which is basis of democracy cannot be made[[1]](#footnote-2). In the case at hand the act of administration of charging petitioner under Section 66A of Information Technology Act, 2000 amounts to violation of freedom of speech and expression granted under Article 19(1)(a).
2. The petitioner also contended that 66A seeks to create an offence but has infirmity and vice of vagueness because the terminology used in it is not clearly defined. further he contended that the phraseology used in Section 66A, 69A and Section 79 of the IT Act, 2000 is so broad and vague and, at the same time, unable to be evaluated on objective standards that it is susceptible to abuse thus due to this many innocent have been booked into this.
3. It is also in the argument of petitioner that the causing of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill- will are excluded from the preview of article 19(2).
4. The petitioner also contended that their right under Article 14 and Article 21 are breached because there is no intelligible differentia that is a rational nexus between those who use the internet and those who by words spoken or written use other mediums of communication thus to punish someone because a person has used a particular medium of communication is in violation of Article 14.

**Arguments from Respondent Side**

1. In the reply the learned counsel for respondent defended the constitutionality of Sec 66 of Information Technology Act, 2000. Legislature is the law-making agency of the country also responsible for the needs of the people. He argued that judiciary interfere with the legislature only when the law is in clear violation with part 3 of the constitution of India.
2. Also, mere presumption of the petitioner that there may be abuse of a provision cannot be a ground to declare a provision invalid.For, a provision to be invalid there must be some infringement of rights.
3. the respondent contended that the Constitution of India speaks about liberty of thought, expression, belief, faith and worship.

**Legal Aspects of the case**

The section 66A is in question which is given below-

"66-A. Punishment for sending offensive messages through communicationservice, 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; or

(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.

Explanation.- For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.[[2]](#footnote-3)

Further the petitioner has also questioned the validity or constitutionality of Sec69A and Sec 79which read as follow-

.Section 69-A. Power to issue directions for blocking for public access of any information through any computer resource.-(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine."

Intermediaries Not to Be Liable in Certain Cases

        (1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hasted by him.

        (2) The provisions of sub-section (1) shall apply if—

                (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hasted; or

                (b) the intermediary does not—

                        (i) initiate the transmission,

                        (ii) select the receiver of the transmission, and

                        (iii) select or modify the information contained in the transmission;

                (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if—

                (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or authorize in the commission of the unlawful act;

                (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

        *Explanation*—For the purposes of this section, the expression “third party information” means any information dealt with by an intermediary in his capacity as an intermediary.[[3]](#footnote-4)

Freedom of Speech and Expression Article 19(1)(a) of the Constitution of India states as follows:

Article 19. Protection of certain rights regarding freedom of speech, etc.- (1) All citizens shall have the right- to freedom of speech and expression;[[4]](#footnote-5)"

 Article 19(2) states:

"Article 19. Protection of certain rights regarding freedom of speech, etc.- (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."[[5]](#footnote-6)

**Comparison of Indian Law with Other Nation.**

In the case of Whitney v. California, Justice[[6]](#footnote-7)Brandeis declared that the Liberties should be viewed as a means as well as a goal and a fair excuse should be offered for concern that if such freedom of speech is exercised, significant evil will follow.The Supreme Court has long questioned whether or not the U.S.

Is it necessary to make decisions in the sense of Art. 19? Three amendments have been made:

1. The first amendment of the United States is absolute and Congress shall make no law which abridges freedom of speech.
2. US first amendment expresses freedom of speech and the press without any reference to expression whereas Article 19(1)(a) speaks of freedom of speech and expression without any reference to the press.
3. Under U.S. law, speech may be abbreviated if obscene, libelous, lewd, and profane, while under Indian law it is subject to eight elements referred to in Article 19(2).

The only distinction between the U.S. and Indian freedom of speech and expression is that if there is a legitimate need in the U.S. to accomplish a major government agenda or objective, a rule pass the test, but in India, if it is not covered by eight subjects it will not pass the muster test.

**Precedents of High Court and High Court**

Various Judgements have referred the importance of freedom of speech and expression such as in the case of Maneka Gandhi V. Union of India[[7]](#footnote-8)the Supreme Court held that freedom of speech and expression has no geographical limitation and moves with a citizen's right to collect information and exchange ideas with others, not only in India but also abroad. Further in the case of Romesh Thappar v. State of Madras[[8]](#footnote-9), this court stated that only narrow restrictions have been imposed by the constitution on the freedom of expression and therefore, any legislation which would allow wider restrictions was to be considered invalid. In the case of Union of India v. Association for Democratic Reforms and Anr,[[9]](#footnote-10) this Court held that "One-sided information, disinformation, misinformation and non-information all create uninformed citizenship that makes democracy a farce. Freedom of speech and expression includes the right to communicate and receive information, including freedom of expression. In the Bennett Coleman & Co. & Ors. v. Union of India & Ors[[10]](#footnote-11)., [1973] 2 S.C.R. 757 at 829, that the freedom of speech and of the press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Thus, the freedom of speech and expression is essential right of the people and cannot be curtailed off.

Similarly, in S. Khushboo v. Kanniamal & Anr.[[11]](#footnote-12)The court stated that Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as ‘decency and morality’ among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry[[12]](#footnote-13)

**Critical Overview of the Judgement**

Now, the court will critically analyse the challenge made in this writ petition and argued before us.Section 66A has been challenged in the ground that the section is very wide, unclear and capable of being misused and "all information" that is disseminated over the internet is included within its reach, thus before further analyzing the definition of ‘information’ under Information and Technology Act, 2000 under section 2(v) is as follow-

Definitions. -(1) In this Act, unless the context otherwise requires, -

 "Information" includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer-generated micro fiche."[[13]](#footnote-14)

The Court first discussed three fundamental concepts in understanding the freedom of expression: discussion, advocacy, and incitement. Article 19(1)(a) grants the freedom of speech and expression thus discussion, advocacy, free speech, debate is the clearly is at the core of Article 19 no matter how controversial or hated issue is.

Article 19(2) provides reasonable restriction on the above right only if the grounds mentioned under this article is getting violated. Thus, to curtail the freedom referred to in Article 19(1)(a), the ground must qualify the test referred to in Article 19(2), which lists only eight conditions or elements but does not pass the muster test and element of Article 19(1)(a). analysing every ground one by one with the petitioner arguments.

'Public Order' is a term that refers to a state of peace and tranquillity that prevails over and among the members of a society as a consequence of the internal laws imposed by the State which has formed the rule in due course. In Arun Ghosh v. State of West Bengal,[[14]](#footnote-15) the order states that it was made to prevent him from acting prejudicially to the maintenance of public order. For curtailing the right,a direct and immediate connection to the expression. It must be noticed that the written words sent by the petitioner is not of any importance so far as this Section is concerned. The message sent by the petitioner is not of such nature that it may harm the public at large. There is no nexus between the message and the action which is charged to be taken thus there is no such ingredient which can incite or have the tendency of being an immediate threat to public safety or tranquillity.

 It must be noted that reputation injury is an essential ingredient for something to be defamatory. Section 66A does not deal explicitly or impliedly with a reputational injury. Also in section 499 of Indian Penal Code defamation is defined as Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Thus, section 66A has nothing to deal with Defamation.

In the case of Door darshan v. Anand Patwardhan's Directorate-General,[[15]](#footnote-16) the Supreme Court observed the law in the United States of America and said that a material could be considered obscene if the average person applying contemporary society or community standards discovered that the subject matter as a whole appealed to the prurient interest and that it would otherwise be taken as a whole. Section 66A cannot reasonably be said to characterize a crime that fits within the context of "decency" or "morality."

Under Section 66A, what could be grossly offensive or unpleasant need not be inherently obscene? Throughout Section 66A, the term 'obscene' is absent.

According to Section 69A blocking of the website can only take place by a direct and reasonable order after having followed certain procedural rules and protections which also include a hearing to the originator and intermediary. There are two forms in which a website blocking order can be passed-first by the designated officer while compliance with the 2009 Rules and second by the designated officer when he has to operate on the order handed down by the competent court.

**Conclusion**

Section 66A was completely in violation of Article 19(1)(a) and is not protected in compliance with Article 19(2). Section 69A and the rules on IT (procedure and safeguard for blocking public access to information) are constitutional, clear and not vague. Section 79 is applicable before section 79(3)(b) being interpreted.

**References**

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