



## SHREYA SINGHAL V/S UNION OF INDIA (2013) 12 SCC 73

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### Abstract

**“The internet is the first thing that the humanity has built that humanity does not understand, the largest experiment in anarchy that we have ever had”**

#### **Eric Schmedit.**

Fundamental right of speech and expression is an indispensable right granted by the Constitution besides the question stands whether such right can be defied where the legislature creates a law having an overriding effect over the fundamental rights? This case irons out the position that regardless of importance of a provision, The Fundamental Right of Speech and Expression shall withstand. “*Law changes according to society; Society changes law*” this phrase meticulously epitomizes the case, as by the virtue of Information Technology (Amendment) Act, 2008 Section 66A, Section 69A and Section 79 were introduced because of technological shift in the society, whereas in 2015 Section 69A was struck down as it was against the interest of society and is ‘*Contradictio in Adjecto*’. Section 69A was much mooted amongst the denizens, but as an ‘*infamy*’. Stepping to the fore, Honourable Supreme Court of India has declared a censorship law as felonious.

#### **Background**

Two girls namely Rim Srinivasan and Shaheen Dhada were arrested in 2012 as they communicated trepidation at Bandh on demise of Bal Thackrey. One girl shared her

views on facebook and also mentioned that, an attack has been conducted by Shiv Sena activists on her Uncle’s clinic, this post was liked by another girl and hence both the girls were arrested under Section 66A, as it is a cognizable offence under which an arrest can be made even without warrant. This incident turned last nail in the coffin and was protested all over the world. The petitioner in the said case contended, that Section 66A is not clear in phraseology i.e. the words are ill-defined and even an innocent can come under the jurisdiction of such law as it gives the government authorities a wide spectrum of arbitrariness also it is similar to the concept of “Censorship” and is insidious to Article 19. Section 66A is discriminatory, in the light of Article 14 and Article 21 as there is dearth of differentiation between *crime committed by spoken words/writing v/s the crime committed by the means of using internet*.

#### **Issues:**

- ✓ Whether Section 66A of IT Act infringes the fundamental right to speech and expression envisaged under Article 19?
- ✓ Whether Section 66A of IT Act is covered under the parasol of Article 19(2)?

#### **Analysis of Arguments:**

##### **Petitioner’s argument:**

- ✓ Section 66A infringes the fundamental right of speech and expression as well as is not protected under Article 19(2).
- ✓ Phraseology of Section 66A is vague and ambiguous in nature, as there are no limitations defined and is open to the law authorities to put forward any interpretation as the terms ‘insult’,



‘annoyance’, ‘obstruction’, ‘hatred’, etcetera are ill-defined.

- ✓ The veracity of Section 66A is questionable.
- ✓ Section 66A is “Self-discriminatory” in nature as there is dearth of a firm assertion, to target digital technology only.
- ✓ Article 19(2) includes ‘discussion’, ‘advocacy’ and ‘incitement’ and mere ‘advocacy’ is protected under Article 19.

**Respondent’s Argument:**

- ✓ Contention of “prone to abuse or misuse” is no valid ground for declaring a provision as unconstitutional.
- ✓ The Court is vested with powers to construe a law as to make it functional.
- ✓ Courts can only actuate when there is question of clear violation regarding Part-III of Indian Constitution.

**The United States First Amendment**

Whether the judgements of the Courts of United States shall be considered in the context of Article 19 or not. It was hence concluded that indeed they can be referred because US First Amendment is absolute in nature and provides for complete freedom of speech and is similar to Article 19.

**Court’s Verdict**

✓ **“Clear and Present Danger Test”**

On invoking the clear and present danger test under Article 19(2) ,it was held that mere advocacy of speech is not an offence or prohibited under Article 19(2). However, incitement finds a room under Article 19(2).

✓ **“Vagueness and Ambiguity”**

The words used under Section 66A are not clear for the citizens to elucidate as to what is an offensive conduct and what is not an offensive conduct.

✓ **“Wider Concept”**

The concept of Section 66 is wider and is prone to obstacles regarding the interpretation also to layman as to understand the nature of Section 66A. Therefore, Section 66A has a chilling effect.

✓ **“Intelligible Differentia”**

The provision lacks differentiation between media as well as internet as a medium.

**Effects of Judgement**

- ✓ Section 66A of Information and Technology Act has been declared as unconstitutional being violative of Article 19(1) (a) and is also not saved under Article 19(2).
- ✓ The court upheld the constitutional validity of Section 69A and Information Technology (Procedure and Safeguard for Blocking for Access of Information by public) Rules.
- ✓ Section 118(d) of Kerala Police Act has been struck down with regard to public order.
- ✓ Section 79 was regarded as a valid subject.

**Snippet of case**

The court declared section 66A as unconstitutional, stating ‘what may be offensive to one necessarily is not offensive to other’. The writ was concerned with the phraseology along with the ambit of Section 66A, 69A and Section 79 of the IT Act. The provisions have been regarded as ‘Broad’, ‘Vague’ and simultaneously ‘Susceptible to draconian activities’. Indeed the case is a real win , which proves that even a legislature cannot intervene with the fundamental rights. The court, in its judgement has improved the legacy regarding freedom of speech, indeed the justice is achieved in the ‘courtroom’, what about the scenario beyond the courtrooms?



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Even in 2018, the police authorities are arresting innocents under section 66A. This depicts the scenario of our country where on one hand people fight for their rights and on other hand ignores their rights. As well said *'I wish you knew more about what to do with information once you get it, but that's a private wish'*, Peter Drucker.

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