**SHREYA SINGHAL v. UNION OF INDIA**

CASE ANALYSIS

**Case Summary and Outcome**

The Supreme Court of India invalidated Section 66A of the Information Technology Act of 2000 in its entirety.  The Petitioners argued that Section 66A was unconstitutionally vague and its intended protection against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will were beyond the scope of permissible restrictions under Article 19(2) of the Indian Constitution. The Court agreed that the prohibition against the dissemination of information by means of a computer resource or a communication device intended to cause annoyance, inconvenience or insult did not fall within any reasonable exceptions to the exercise of the right to freedom of expression. It further found that because the provision failed to define terms, such as inconvenience or annoyance, “a very large amount of protected and innocent speech” could be curtailed and hence its sweep was overly broad and vague.

**Facts**

Police arrested two women for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader. The police made the arrests under Section 66A of the Information Technology Act of 2000 (ITA), which punishes any person who sends through a computer resource or communication device any information that is grossly offensive, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will.

Although the police later released the women and dismissed their prosecution, the incident invoked substantial media attention and criticism. The women then filed a petition, challenging the constitutional validity of Section 66A on the ground that it violates the right to freedom of expression.

The Supreme Court of India initially issued an interim measure in*Singhal v. Union of India*, (2013) 12 S.C.C. 73, prohibiting any arrest pursuant to Section 66A unless such arrest is approved by senior police officers.  In the case in hand, the Court addressed the constitutionality of the provision.

**Decision Overview**

Justices Chelameswar and Nariman delivered the opinion of the Supreme Court of India.

The main issue was whether Section 66A of ITA violated the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India. As an exception to the right, Article 19(2) permits the government to impose “reasonable restrictions . . . 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 offense.”

The Petitioners argued that Section 66A was unconstitutional because its intended protection against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will fall outside the purview of Article 19(2). They also argued that the law was unconstitutionally vague as it fails to specifically define its prohibitions. In addition, they contended that the law has a “chilling effect” on the right to freedom of expression. [para. 5]

The government, on the other hand, argued that the legislature is in the best position to fulfill the needs of people and courts may interfere with legislative process only when “a statute is clearly violative of the rights conferred on the citizen under Part-III of the Constitution.” [para. 6] The government contended that mere presence of abuse of a provision may not be a ground to declare the provision as unconstitutional. Also, the government was of the opinion that loose language of the law could not be a ground for invalidity because the law is concerned with novel methods of disturbing people’s rights through internet. According to the government, vagueness cannot not a ground to declare a statute unconstitutional “if the statute is otherwise legislatively competent and non-arbitrary.” [para. 6]

The Court first discussed three fundamental concepts in understanding the freedom of expression: discussion, advocacy, and incitement. According to the Court, “[m]ere discussion or even advocacy of a particular cause howsoever unpopular is at the heart” of the right. [para. 13] And, the law may curtail the freedom only when a discussion or advocacy amounts to incitement. [para. 13]

As applied to the case in hand, the Court found that Section 66A is capable of limiting all forms of internet communications as it makes no distinction “between mere discussion or advocacy of a particular point of view, which may be annoying or inconvenient or grossly offensive to some and incitement by which such words lead to an imminent causal connection with public disorder, security of State etc.” [para. 20]

The Court further held that the law fails to establish a clear proximate relation to the protection of public order. According to the Court, the commission of an offense under Section 66A is complete by sending a message for the purpose of causing annoyance or insult. As a result, the law does not make distinction between mass dissemination and dissemination to only one person without requiring the message to have a clear tendency of disrupting public order.

As to whether Section 66A was a valid attempt to protect individuals from defamatory statements through online communications, the Court noted that the main ingredient of defamation is “injury to reputation.” It held that the law does not concern this objective because it also condemns offensive statements that may annoy or be inconvenient to an individual without affecting his reputation. [para. 43]

The Court also held that the government failed to show that the law intends to prevent communications that incite the commission of an offense because “the mere causing of annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all.” [para. 44]

As to petitioners’ challenge of vagueness,  the Court followed the U.S. judicial precedent, which holds that “where no reasonable standards are laid down to define guilt in a Section which creates an offense, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a Section which creates an offense and which is vague must be struck down as being arbitrary and unreasonable.” [para. 52]  The Court found that Section 66A leaves many terms open-ended and undefined, therefore making the statute void for vagueness.

The Court also addressed whether Section 66A is capable of imposing chilling effect on the right to freedom of expresssion. It held that because the provision fails to define terms, such as inconvenience or annoyance, “a very large amount of protected and innocent speech” could be curtailed. [para. 83]

The Court also noted the intelligible difference between information transmitted through internet and other forms of speech, which permits the government to create separate offenses related to online communications. Accordingly, the Court rejected petitioners’ argument that Section 66A was in violation of Article 14 of the Constitution against discrimination. [para. 98]

The Court declined to address the Petitioners’ challenge of procedural unreasonableness since the law was already declared unconstitutional on substantive grounds. It also found Section 118(d) of the Kerala Police Act to be unconstitutional as applied to Section 66A.

Based on the forgoing reasons, the Court invalidated Section 66A of ITA in its entirety as it violated the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India.