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Case Comment: Shreya Singhal v Union of India: A War against Draconian Executive Power

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INTRODUCTION

One of the most essential and necessary fundamental rights given to the Citizens by the Indian Constitution is the Right to Freedom of Speech and Expression as enshrined in Article 19(1)(a)¹. The wording of this article is 'All Citizens shall have a right to freedom of Speech and Expression'. But, just like every Fundamental Right is subject to reasonable restrictions, this fundamental right is also subject to reasonable limits as provided under Article 19(2)². It states "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 about Contempt of Court, Defamation or incitement to an Offense."

¹ Constitution of India 1950, art 19(1)(a)

² Constitution of India 1950, art 19(2)

An exercise of word-to-word interpretation of Article 19(2)³ would unequivocally lead to a conclusion that if any of a law is putting reasonable restriction on right to freedom of speech and expression, if such limitation is in the interest of the Sovereignty and Integrity of India or to protect foreign relations of India or the security of India or public order, decency or morality or the order to preserve the Contempt of Court or exercise of the right has either caused Defamation or the incitement of an Offense then such law cannot be held as unconstitutional on the ground of being violative of Article 19(1)(a)⁴.

The case of *Shreya Singhal v Union of India*⁵ is a landmark case on this particular right, as it has protected the right of freedom of speech and expression of the citizens and curbed draconian Executive power conferred upon it by the Information Technology Act. This particular case is also a classic example of how there is a lack of enforcement of Judicial declarations in our Country and also how it is the legislature's active role that helps in solving every legal problem of this Country and not Judicial activism.

HISTORICAL BACKGROUND OF THE CASE

On 17th November 2012, socio socio-political forum of Maharashtra, India suffered deep trauma due to the death of Shree Babasaheb Thackrey, fondly called as 'Hindurudhay Samrath' by many. To pay homage to the departed Soul, 'Mumbai band' was announced for two days after his death.

Two students of law named Ms. Shaheen Dhada and Rinu Srinivasan had liked and posted a Facebook status criticising the decision of the Mumbai band. These two students were booked U/s 66A Information Technology Act and arrested by the Police, stating their action could create a public disorder in Mumbai, as he was considered as God by the people residing there. A law student named Shreya Singhal filed a public interest litigation before the Hon'ble Supreme Court challenging the arrest of the two students by challenging the constitutional validity of Sections 66A, 69A, and 79 of the IT Act 2000⁶, along with the

³ *Ibid*

⁴ Constitution of India 1950, art 19(1)(a)

⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1

⁶ Information Technology Act 2000

constitutional validity of Rules 2(g), 3, 4, 6, 7, 8, 9, 10, 14 and 16 of the Information Technology Procedure and Safeguards for Blocking Access to Information by Public Rules 2009⁷.

JUDGMENT AND RATIONAL GIVEN BY THE JUDGMENT

On 24th March 2015, the Hon'ble Supreme Court held that Section 66A of the IT Act is violative of Article 19(1)(a) and declared it unconstitutional. The Hon'ble Court also held that Section 69A, 79 and the rules mentioned above are not violative of Article 19(1)(a) and held them to be constitutionally valid.

REASONS GIVEN BY THE HON'BLE APEX COURT FOR THE CONCLUSION DRAWN

The Hon'ble Apex Court said that the wordings of Section 69 and Section 79 of the IT Act 2000 are not vague and come under the ambit of the word 'Public Order' given in Article 19(2) of the Constitution, hence held these two sections to be Constitutionally valid.

Violation of Article 19(1)(a) Right to Freedom of Speech and Expression: The Court held that Section 66A⁸ was unconstitutional because it placed arbitrary, excessive, and vague restrictions on free speech. The provision was broad and ambiguous, leading to misuse by law enforcement agencies.

Failure to Meet Reasonable Restrictions under Article 19(2): The government argued that Section 66A was justified under reasonable restrictions (Article 19(2)⁹, such as public order, Defamation, and incitement to an offence. However, the Court ruled that the section was not narrowly tailored to these grounds and imposed an unjustifiable chilling effect on free speech.

Vagueness and the Arbitrary Nature of Section 66A: The Court criticised the vague and undefined terms in the provision, such as 'grossly offensive' and 'annoyance'. It stated that the lack of clear standards allowed arbitrary enforcement, violating Article 14 (Right to Equality)¹⁰.

Distinction Between Discussion, Advocacy, and Incitement: The judgment made a crucial distinction. Discussion and advocacy of ideas, even if unpopular or offensive, are protected

⁷ Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules 2009

⁸ Information Technology Act 2000, 66A

⁹ Constitution of India 1950, art 19(2)

¹⁰ Constitution of India 1950, art 14

under Article 19(1)(a)¹¹. Only incitement to violence or public disorder can be constitutionally restricted. Since Section 66A criminalised mere annoyance or inconvenience, it exceeded constitutional limits.

Section 66A and Public Order: The Government claimed that the provision protected public order, but the Court rejected this argument. It held that there was no direct link between causing annoyance online and disturbing public order; hence, it could not be justified under Article 19(2).¹²

CRITICAL ANALYSIS OF THE JUDGMENT

A Victory for Free Speech: The judgment reaffirmed that free speech is the foundation of democracy. By striking down Section 66A, the Court prevented arbitrary criminalisation of online speech. This particular judgment is a classic example of how the constitutional courts in India are assigned the paramount task of protecting the fundamental rights of the citizens and preventing the executive from exercising the power conferred by the law on it in a draconian way.

Failure of Legislative Drafting: Section 66A was poorly drafted and overly broad, leading to subjective interpretation and misuse. The government's defence that the law was meant to curb cyber threats was weak, as existing laws already addressed those concerns.

Judicial Activism vs Parliamentary Responsibility -

This Supreme Court decision reflects judicial activism, as it stepped in to protect fundamental rights. However, the judgment also highlights a failure of the legislature, which should have drafted better laws to regulate online content. This judgement has also highlighted that merely because the reach of social media is very large and faster than the print media cannot give arbitrary power to the Executive to draft a very overly broad, vague or arbitrary provisions in a legislation.

The provisions involved in IPC, CRPC and other special statutes are sufficient to control and prevent the obscene material, the provision of the nature of which is 66A.¹³ The IT Act is a

¹¹ Constitution of India 1950, art 19(1)(a)

¹² Constitution of India 1950, art 19(2)

¹³ Information Technology Act 2000, 66A

clear example of executive overreach because it creates a chilling effect on the fundamental rights of citizens.

Implementation Issues Post-Judgment -

Even years later, and despite the judgment, Section 66A continued to be misused by Police Authorities. This highlights the gap between Judicial pronouncements and ground-level enforcement. This particular Judgement also states that Judicial Activism cannot be a solution to each and every legal problem, as the Judiciary can only address the lacunas present in the law, but cannot prepare a law; therefore, having a wise and vigilant legislature is the best solution to each and every legal problem. Hence, it is the responsibility of Citizens to vote very wisely.

The best suitable example for the statement made above is the case of *Vishakha v State of Rajasthan*,¹⁴ in which the Hon'ble Supreme Court gave guidelines for the prevention of women from sexual harassment at the workplace. These guidelines addressed the issue of preventing sexual harassment at workplace, procedure to prosecute the offender etc.; but these guidelines did not state that what quantum of punishment must be given to the offender as if the Apex Court would have given the quantum then it would have amounted to judicial overreach and not to Judicial Activism.

CONCLUSION

In conclusion, it can clearly be stated that this is one of the landmark judgements of the Hon'ble Supreme Court, which has laid down the protection of fundamental rights and how the Supreme Court discharges its duty of curtailing the Executive from exercising arbitrary power conferred on it by a law in a draconian way.

It also reminds us about the gap present between the judicial pronouncement and the enforcement of that particular judicial pronouncement. The judgment also sheds light on how public interest litigation is a very effective tool developed by the Judiciary that can be used to develop the law and protect the fundamental rights of persons who cannot approach the Constitutional Courts.

¹⁴ *Vishakha v State of Rajasthan* (1997) 6 SCC 241

The *Shreya Singhal v Union of India*¹⁵ Judgment marks a monumental victory for the protection of individual liberties in the digital age and sets a precedent for the preservation of democratic values in India. By striking down Section 66A of the Information Technology Act, the Supreme Court not only upheld the sanctity of Article 19(1)(a)¹⁶ but also reinforced the principle that vague and arbitrary laws cannot be allowed to curb the fundamental freedoms of citizens. The verdict is a testament to the judiciary's role as the guardian of the Constitution and a necessary check on the misuse of executive powers.

However, the aftermath of the judgment also reveals a significant gap between legal declarations and their actual enforcement. Despite being struck down, Section 66A continued to be invoked by law enforcement, showcasing the urgent need for better awareness, accountability, and systemic reform. The case also underlines that while judicial activism can act as a remedy in the short term, long-term solutions lie in responsible legislative action and public vigilance.

Ultimately, the case serves as a reminder that democracy is not a self-sustaining system—it requires active participation from an informed citizenry, a vigilant press, a responsive legislature, and a proactive judiciary. The *Shreya Singhal* judgment will continue to inspire future discourse around digital rights, free expression, and the limitations of executive authority in the modern world.

¹⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1

¹⁶ Constitution of India 1950, art 19(1)(a)