

AN ANALYSIS OF VALIDITY OF SECTION 66A OF IT ACT, 2000 IN SHREYA SINGHAL V. UNION OF INDIA

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Abstract

Now anyone can voice themselves on the internet without fear of criminal proceedings against them. Many cases had instilled such fear in the minds of the youth who use the internet to voice their views. Such limitation to voice one's views is contradictory to the Fundamental Right to Freedom of Speech and Expression. Section 66A of the Information Technology Act, 2000 is the offence which is constituted by sending information which is offensive, menacing in nature and prescribes a punishment of three years with fine. This draconian law was declared to be unconstitutional by the Hon'ble Supreme Court recently on the ground that it blatantly violates the Freedom of Speech and Expression guaranteed by the Constitution of India and every such violation which is not saved by the exceptions which are reasonable in nature are unconstitutional. The case had been filed on grounds of the law being violative of two fundamental rights, however, only one of them has been accepted by the Supreme Court. This paper analyzes the parameters and the way the Hon'ble Court arrived at the judgement which protected the Freedom of Speech in India. Further it also seeks to analyze the contentions which have not been able to sustain in the Supreme Court.

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Introduction

This case was considered by the Hon'ble Supreme Court of India as a Writ Petition under Article 32 of the Constitution of India and was decided by the Court on 24th March 2015. By way of this writ petitions, the Supreme Court commonly disposed of these petitions by ruling Sections 66A of the IT Act, 2000, hereinafter called as Section 66A and Section 118(d) of the Kerala Police Act unconstitutional as being violative of Article 19(1)(a) and not saved by Article 19(2). Further, it ruled that Sections 69A and 79 of the IT Act, 2000 and the Information Technology Rules, 2009 constitutionally valid².

Section 66A is the section that criminalizes the sending of offensive messages using a computer, computer network or computer resource located in India. This section has been construed in a very broad manner covering almost anything which one might regard offensive. Such a construction would bring a halt on the Freedom of Speech and Expression and would in fact deter free speech and thus, bring about a chilling effect on speech. Further, the misuse of this section has been widely known and popularized by the media. The Supreme Court of India considering all these aspects has decriminalized Section 66A of the IT Act.

The immediate concern of the applicants was the presence of Section 66A which was not a part of the original IT Act, 2000 but came into force by virtue of an amendment Act of 2009. Section 66A reads as follows

“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.”³

² Shreya Singhal v Union of India AIR 2015 SC 1523

³ Section 66A; Information Technology Act, 2000

The elements of the Section are

- a) Sending information by means of a communication device
- b) Such information having a grossly offensive meaning or menacing character
- c) Such information which he knows to be false but sends it for the purpose of but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.
- d) An email or message which is sent for purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages

The constitutionality of this section has been contended on the following grounds by way of the writ petition

1. Article 19(1) – Freedom of Speech and Expression
2. Article 14 – Right to Equality
3. Article 19(2) – Reasonable Restrictions
4. Statement of Objects and Reasons of the IT Act

Along with Section 66A, the validity of Section 69 shall also be tested with regard to the following provisions. These provisions are of phenomenal importance as they are very fundamental to the Constitution and are basic human rights that are prevalent in a democratic nation like India. The Supreme Court recognized these as basic human rights and any law which is in contravention with the basic structure of the Constitution shall be regarded as unreasonable and arbitrary in nature as a result of it being not acceptable violating the basic human rights fundamental to the Constitution of India.⁴

⁴Keshavananda Bharti v State of Kerala (1973) 4 SCC 225

CONSTITUTIONALITY OF SECTION 66A

Statement of Objects and Reasons

The Statement of Objects and Reasons appended to the bill which introduced the act read as follows in Para 3:

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, ecommerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal code, the Indian Evidence Act and the code of Criminal Procedure to prevent such crimes.

The contention of the petitioner was that Section 66A did not act as a remedy or a safeguard against any new crime that emerged as a result of information technology. The petitioners interpreted the usability of Section 66A in light of the Statement of Objects and Reasons when Sections 66B to 67C are good enough to deal with the crimes covered under Section 66A. However, the Supreme Court held that declaring the section unconstitutional merely on ground of it being violative or opposed to the Statement of Objects and Reasons is beyond the scope of *Judicial Scrutiny and Activism* as judiciary can declare a law constitutional only if it violates the basic structure of the Constitution⁵ and hence, this would not be a valid ground for contending validity of a law in a court.

Possibility of abuse of law

The legislature is considered to be in the best position to assess and represent the interests of the people and there is a presumption in favour of constitutionality of provision. The constitution does not impose impossible standards of determining validity. Mere possibility of abuse of a provision cannot be a ground of invalidation of such provision. Further vagueness is also not a ground to invalidate a law. Hence, the two mentioned grounds have not been accepted as grounds to invalidate Section 66A.

Article 19(1)

⁵Keshavananda Bharti v. State of Kerala

Freedom of Speech and Expression is one of the most important rights which guarantees voice of the people in a democracy. It is fundamental to the existence of a democracy and is in consonance with the ideals of freedom. There are three main concepts fundamental to the Freedom of Speech and Expression namely

1. Discussion
2. Advocacy
3. Incitement

Mere discussion or advocacy does not invite limitations of Article 19(1). It is only when such discussion or advocacy reaches the point of incitement does it attract Article 19(2). At this stage, the state, as per the powers vested in it by Article 19(2) may curtail this freedom. This right has been expanding largely in the recent past across the world making it a basic human right and almost, an absolute one till such right reaches the point of incitement. The features of Article 19 as enlisted in the 101st Report of The Law Commission of India⁶

1. Article 19 is confined to citizens and foreigners cannot claim under this right.
2. A corporate body cannot claim citizenship and therefore cannot claim any right under Article 19.

This right has been construed in a welfare manner beneficial to the citizens. In *State of Uttar Pradesh v Raj Narain*⁷, the Supreme Court laid down that Article 19(1) not only guarantees freedom of speech but also ensures and comprehends right of citizen to know, right to receive information regarding matters of public concern. This right has been construed and given such importance that it has been interpreted to include the Right to fly the National Flag freely with respect and dignity within its huge scope and ambit subject to the provisions of the The Emblems and Names Act and Prevention of Insults to National Honour Act, 1971 which regulate the use of the National Flag.⁸

Section 66A has further been challenged on the ground that it casts the net far wide and includes all information on the internet. Information is defined by Section 2(v) as including any data,

⁶ Law Commission of India: Report 101

⁷ AIR 1975 SC 865

⁸ Union of India v Naveen Jindal (2004) 2 SCC476

message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.

- The definition is an inclusive definition. It includes all type of data and covers all types into its ambit thus not leaving any part of the internet.
- This definition does not refer to what the content can be, and only refers to mode of such content. Thus it includes all information under it.

Considering the observations of Justice Jackson in *American Communications Association v. Douds*⁹

“Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored.”

Section 66A clearly affects the freedom of speech and expression of the citizenry of India at large in that such speech or expression is directly curbed by the creation of the offence contained in Section 66A.

⁹ 94 L. Ed. 925

Article 19(2)

Reasonable restrictions may be placed by the Government when such use of the freedom of speech and expression under Article 19(1) crosses the point of advocacy of an idea, however unpopular or contrary to public opinion it may be. It is noteworthy to observe the US Supreme Court Judgement in the case of *Chaplinsky v New Hampshire*¹⁰

“Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words--those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.”

It has been defined that penalizing some classes of overstepping of the freedom of speech and expression is found to be no barrier or not a constitutional limitation as being violative of the Freedom of Speech and Expression. Broadly, the following have been categorized as classes of wrongs which do not have constitutional protection of freedom of speech including but not limited to libellous, obscene, insulting or instigating words or expressions.

The differences between the Right to Freedom of Speech and Expression in USA (1st Amendment¹¹) and the Indian Law are

- a) The US law does not specifically put a barrier on the legislature to make a law which is oppressive in regard to the fact that they suppress or limit the Fundamental Rights or specifically, the Freedom of Speech

¹⁰ MANU/USSC/0058/1942

¹¹ United States Constitution: 1st Amendment

- b) The US law has considered 'expression' part of freedom of speech while the Supreme Court has considered 'press' as part of Article 19(1)(a).
- c) The starking difference is with regard to the aspects of a reasonable restriction. A reasonable restriction is acceptable in India if such restriction falls under the eight categories mentioned under Article 19(2) while in USA, such restriction may be reasonable if it is a compelling necessity to achieve an important governmental or societal goal. However, 'public interest' per se does not hold muster in the Indian scenario of the restriction on Article 19

The understanding of the freedom of speech and expression and the interpretation of the US law into the Indian scenario may be understood with the help of the Supreme Court's judgement in the case of *Indian Express Newspapers (Bombay) v. Union of India*¹², in which the court ruled that while examining the constitutionality of a law in India, solely considering the US law with regard to freedom of speech and expression would not suffice. But in order to understand the principles, they can be used as a highly persuasive value. The pattern of the limitations which are placed are different from those which are acceptable in the US law as in India, the limitations have to fall under the eight heads mentioned under Article 19(2).

Section 66A has been challenged on the ground that it places a limitation on a very wide note and not in particular falling under any of the heads mentioned under Article 19(2). The Supreme Court laid down that the heads cannot be easily expanded because it would be too wide to construe the term reasonable and it has to be limited in its scope. In *Sakal Papers v. Union of India*¹³, it was laid down that it may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in Clause (6) of Article 19.

Further, in the case of *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*¹⁴, it was laid down that a restriction made in the interest of public order must also have reasonable relation to the object to be achieved i.e. public order.

¹² (1985) 2 SCR 287

¹³ (1962) 3 S.C.R. 842

¹⁴ (1960) 2 S.C.R. 821

Defamation

Defamation is defined in Section 499 of IPC and an essential element of defamation is injury to reputation. Section 66A does not concern itself with reputation. The section only talks of something grossly offensive and not about defamation. Therefore it is clear that the section does not aim to cover defamatory statements at all.

Incitement to an offence

Section 66A does not specifically discuss incitement because a fair comment till the level of discussion or advocacy does not amount to incitement to an offence. The information may not incite anyone per se, it might as well be till the point of discussion or advocacy. As Section 66A severely curtails information that may be sent through the internet and does not mention whether the information be opposed to the eight subjects under Article 19(2) thus making it ultra-vires the constitution or unconstitutional.

Decency or Morality

The test laid down in *Hicklin's case*¹⁵ was approved by Supreme Court in *Ranjit Udeshi v State of Maharashtra*¹⁶. The test was 'Whether the tendency of the matter charged as being obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall?' However, later the SC laid down the standard in *Director General, Directorate General of Doordarshan v. Anand Patwardhan*¹⁷ that a material would be treated as obscene if the average person applying contemporary standards would find that subject matter taken as a whole appeals to the prurient interest and that taken as a whole it otherwise lacks serious literary artistic, political, educational or scientific value.

Section 66A cannot possibly be said to create an offence which falls within the expression 'decency' or 'morality' in that what may be grossly offensive or annoying under the Section need not be obscene at all-in fact the word 'obscene' is conspicuous by its absence in Section 66A.

Public Order

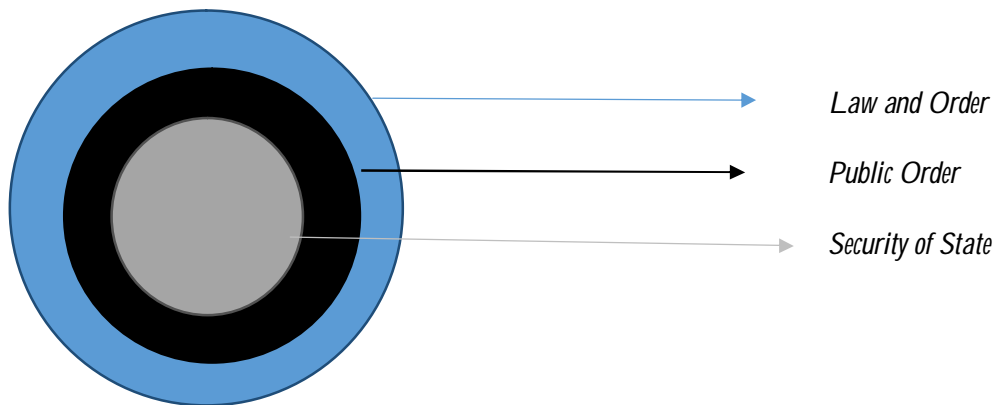
¹⁵Regina v. Hicklin L.R. 2 Q.B. 360 (1868)

¹⁶ (1965) 1 S.C.R. 65

¹⁷ 2006 (8) SCC 433

It is not open to the legislature of India to curtail or restrict fundamental rights in the general public interest. That is a blanket term which is used and can be very widely construed. The question in the case of *Sakal Papers v. Union of India* was whether the legislature can limit the Right to Freedom of Speech under Article 19 with the object of placing restrictions on business activities of a person. The State claimed under Article 19(2) reasonable restrictions may be placed while the court held that such restrictions may be applicable only when it is in the interest of security, friendly relations with foreign state, public order, decency or morality, contempt of court, defamation or incitement to an offence (The pigeon holes).

The words 'public order' were added into the Constitution of India by way of the 1st Amendment Act following a series of judgements supporting the same. In *Dr. Ram MonoharLohiya v. State of Bihar*¹⁸, the court held that 'public order' was said to comprehend disorders of less gravity than 'security of state'. The Supreme Court in the case further laid down the following interpretation of the words 'public order'



The test was formulated by these judgements, whether a particular act leads to the disturbance of the current life of the community or does it merely affect an individual leaving the tranquillity of society undisturbed? Secondly, it must need to have a clear and present danger or a tendency to effect the society's peace. In *Schenck v. United States*¹⁹, the clear and present danger test was laid down. It was to be decided whether such act would produce an imminent threat or danger and if it did, then it can be said to be the vanishing point of the Right to Expression. Further in *Abrams v. United States*²⁰, the clear and imminent danger test was laid down and two elements which were to proven were identified to be a question of proximity and degree. Further, adapting

¹⁸ (1966) 1 S.C.R. 709

¹⁹ 63 L. Ed. 470

²⁰ 250 U.S. 616 (1919)

the same in Indian Law, the Supreme Court in *S. Rangarajan v. P. Jagjivan*²¹ laid down that the commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

Section 66A clearly does not pass this test as it has no element or tendency to create public disorder which ought to be an essential ingredient of the offence which it creates.

²¹ (1989) 2 SCC 574

Article 14

The petitioners further contended that the section distinguished between medium of print, broadcast, real live speech as opposed to speech on the internet and therefore new categories of criminal offences cannot be made on this ground. The defamation law and Section 66A is further distinguished as under

<i>Defamation Law</i>	<i>Section 66A</i>
Recognizes all modes	Recognizes modes using a computer, computer network or computer resource or communication device
Criminal Defamation under Section 499 of IPC has a maximum punishment of about two years.	Online Defamation under Section 66A of IT Act has a maximum punishment of three years under IT Act
Defamation is non-cognizable.	Offence under Section 66A is cognizable.

The court finally held that there was an intelligible differentia between the punishments and types offences categorized as above in the following manner.

- a) The reach and scope of the virtual world is much more higher than the real world as information progresses faster from person to person causing more injury.
- b) Any person has access to the virtual world and social networks without a fee.

Thus the Section 66A does not violate Article 14.

VALIDITY OF SECTION 66A

The validity of this law is a supportive agent to the primarily unconstitutional elements and is merely supporting factors that fuel the invalidation of the law. There are the elements which support that the law is loosely framed and has loopholes that makes it not a 'good law'.

Construction and Vagueness

The language used in Section 66A is very vague. The petitioners contended that neither the authorities nor the accused would be completely in tune with the nature of the offence committed under this section. The vagueness of this section makes the law abider really cautious as to which behaviour observed by him would be over-stepping the limits set by the law and which behaviour would be punishable. Thus such vagueness must not be encouraged. The United States Supreme Court in the case of *Winters v. People of State of New York*²² held that

“The impossibility of defining the precise line between permissible uncertainty in statutes caused by describing crimes by words well understood through long use in the criminal law-obscene, lewd, lascivious, filthy, indecent or disgusting--and the unconstitutional vagueness that leaves a person uncertain as to the kind of prohibited conduct--massing stories to incite crime--has resulted in three arguments of this case in this Court.”

Thus it is important that penal statutes be construed in a strict manner and be made in such a manner as to cause least amount of ambiguity i.e. the legislature should aim at enforcing the penal statutes strictly or in the same manner as they were intended to be enforced and should be constructed in such a manner so as to ensure least scope for judicial interpretation.

However, as established in the cases of *State of MP v. Kedia Leather & Liquor Limited*²³ and *State of Karnataka v. AppaBaluIngale*²⁴, the Supreme Court and other courts always held that there was no constitutional challenge on the ground of vagueness. Thus, there is no constitutional challenge or a law cannot be repealed by the courts on ground of being unconstitutional merely by reason of its vagueness or misuse of the law.

Chilling Effect and Over breadth

²² 92 L. Ed. 840

²³ 2003 7 SCC 389

²⁴ 1995 Supp. (4) SCC 469

Information which is more of an opinion or assertion of a view which is unpleasant or unpopular to a major part of the society may fall under the wide net cast by Section 66A. This causes chilling speech. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. In a conservative society, a person who posts using social media about the emancipation of women or abolition of caste system would face criticism and would fall under Section 66A. It casts the net so wide that every expression of opinion which hurts another or causes annoyance to another falls under it. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.

Chilling Effect was recognized in Indian law in *R. Rajagopal v. State of Tamil Nadu*²⁵. The principle of *Sullivan* was tested in this case and the court laid down as follows

“While these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them are no less valid in this country. What has been described as 'the chilling effect' induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available.”

Further the essence of the law and the chilling effect was upheld in the case of *S. Khushboo v. Kanniamal*²⁶, the court held that 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 a manner that has chilling effects on the "freedom of speech and expression".

The court further held that chilling effect of defamation is inclusive of bypassing or reaching beyond exceptions in Article 19(2) however the effect must be proximate to the causes and not remote in nature to the exceptions. Summing up, the court held that Section 66A is unconstitutional on the grounds that it takes with it protected and innocent speech and therefore has a chilling effect on free speech and would therefore be struck down on overbreadth.

Wide Misuse of the law

²⁵ (1994) 6 SCC 632

²⁶ (2010) 5 SCC 600

Section 66A is capable of being abused by the persons who administered it is not a ground to test its validity if it is otherwise valid. In *The Collector of Customs, Madras v. NathellaSampathuChetty and Anr.*²⁷, the court held that following numerous judgements, an invalidity petition of a law cannot be brought to a court only on the ground of it being capable of misuse or it being misused. A law which would otherwise be valid cannot be invalidated on the ground that it has wide scope for misuse. The converse must also be followed. A law which would be otherwise be invalid cannot be validated on the ground that it would be reasonably used or fairly used. In the same manner, if Section 66A has a wide scope for misuse, it is not a ground to invalidate the section. Further, an assurance that it would work in a reasonable manner is not a ground to validate the section which is otherwise invalid due to presence of unconstitutional elements. Therefore, it was held that Section 66A has to be judged on its own merits and not on the basis of its usability or reasonableness of its application.

Severability

Section 66A purports the existence of reasonable restrictions on the Right to Freedom of Speech and Expression under Article 19(1)(a) and includes elements which are both saved and not saved by the exceptions of reasonability covered under the aegis of Article 19(2). It must therefore be held that in the case of *K.A. Abbas v. Union of India*²⁸, that a possibility of a law being used in a manner so as to be unconstitutional or *ultra vires* the ambit and scope of the application of law should not be overlooked or neglected. In this case, the Section 66A being applied for purposes other than those sanctioned by the Constitution cannot be ruled out or overlooked. Therefore the whole of Section 66A has to be declared unconstitutional. In *Ramesh Thapar v. State of Madras*²⁹, it was held that the section in question had a much wider range and included much more than Article 19(2) and since it was not possible to split up the section and hence failed the protection offered by Article 19(2). Applying the same in case of Section 66A, it does not fall within any of the subject matters contained in Article 19(2) and the possibility of it being applied for purposes outside those subject matters is clear. Therefore, the court held that no part of the section is severable and hence, the whole section is unconstitutional.

Procedural Unreasonableness

²⁷ (1962) 3 S.C.R. 786

²⁸ (1971) 2 S.C.R. 446

²⁹ (1950) SCR 594

The appellants contended that Section 66A further had an amount of unreasonableness in dealing with the procedures established by law. The court held that procedural unreasonableness was present in the law. Features or elements which were poised as safeguards in the Criminal Procedure Code were absent in the IT Act's Section 66A which caused a lot of unreasonableness in the manner in which the complaints relating to the offence under Section 66A were dealt with. The notable provisions under the Cr.P.C which were missing as part of the safeguards against the offence under Section 66A are Section 95 and 96. The sections deal with the capacity of a person interested in a particular article or work which is charged under defamation to file a petition under Section 96 within two months to apply to the High Court to set aside the declaration upon the High Court shall constitute a bench for hearing the matter.

Thus Sections 95 and 96 reveal a certain degree of sensitiveness towards freedom of speech while such safeguards are absent for an offence which casts the net so wide under the offence under Section 66A of the Information Technology Act, 2000. However, the rationale here is that the section had already been declared unconstitutional on grounds of violating Article 19(1) and not saved by Article 19(2) and hence, the court found no merit in analysing the procedural unreasonableness of the section in question.

Conclusion

This case has revolutionized the concept of Freedom of Speech and Expression guaranteed by the Constitution under Article 19(1). As years passed, the Supreme Court construed the concept of the Freedom of Speech and the fine line between freedom of speech and defamation law and extended the freedom of speech limiting a narrow extent to the defamation law. It has recognized the chilling effect of defamation law on free speech and has ensured that whenever a free opinion is expressed it is allowed and not barred by defamation law.

As Section 66A is the question of consideration before the Supreme Court, the court considered various aspects of the law to test its validity. Validity of the law was tested using both constitutional and other parameters. The constitutional parameters or the constitutionality of the law was considered and it was found that it was blatantly violative of Article 19(1) and not saved by the exceptions or the parameters of 'reasonability' as stated in Article 19(2). This was the observation made by the court making this law unconstitutional. The applicants further contended the law to be violative of Article 14 as it distinguishes between the defamation law using an offline and an online mode. The court held that there was *intelligible differentia* which was employed by the legislature in giving higher imprisonment and making the offence under Section 66A cognizable while that under Section 499 of IPC non-cognizable as internet was free and anyone could express themselves in the virtual world and it has a higher range and faster mode of communication in a wider range. Thus, the claim under Article 14 was held not acceptable.

The Supreme Court agreed with the petitioners in the respect that the said section was very vague in nature and did not specify or clarify the purpose or existence of the said section in the presence of many more dealing with the same or similar subjects. However, it was further held by the court that the validity of a law does not depend on its certainty. Applying the same on the converse, the invalidation of a law cannot depend on its uncertainty. A law which is otherwise valid cannot be declared unconstitutional merely because it is vague or uncertain and a law which is otherwise invalid cannot be declared valid on the ground that it is certain. Hence, the Supreme Court employed the first rule and declared that the vagueness is not a ground to invalidate a law or declare the law contrary to or unconstitutional.

The Supreme Court in many of its judgements has considered the defamation law having a chilling effect on free speech. The fine line between defamation law and free speech and the balance tilting towards defamation law makes free speech chill or causes the chilling effect of free speech. The court observed that Section 66A takes into its wide sweep all kinds of speech including a fair opinion or a fair comment which results in chilling of free speech which includes innocent or privileged speech. Thus, due to its over-breadth, the court declared Section 66A unconstitutional.

Further, ancillary issues including wide misuse of the law were considered by the court. In case of misuse of the law, the Hon'ble court rightly stated and applied that a law cannot be declared unconstitutional or invalidated on the mere ground that its application causes a great misuse of the law as the courts do not possess such power. Thus, the fact that the law is being misused does not convert a law into an invalidated law. Hence, Section 66A, as the court adjudicated had to be judged on its own merits. The aspect of procedural unreasonableness was not considered as far as Section 66A was concerned due to its already declared unconstitutionality.

Challenged to be violative of	Final Standing
Article 19(1) not saved by Article 19(2)	Accepted & S66A declared unconstitutional
Chilling Effect	Accepted as part of Article 19(1)
Article 14 & Statement of Objects	Not Accepted
Vagueness & Scope for Misuse	Not Accepted
Procedural Unreasonableness	Not Accepted as already unconstitutional
Severability	Cannot be severed.

Thus, on ground of being violative of Article 19(1) and not saved by Article 19(2), it is ruled that the offence under Section 66A chills free speech and hence is declared unconstitutional. The Hon'ble Court has given a high value to the Freedom of Speech and has restricted the scope and power of legislature to restrict it only till the point it is saved by Article 19(2).

References

1. Shreya Singhal v Union of India AIR 2015 SC 1523
2. Section 66A; Information Technology Act, 2000
3. Keshavananda Bharti v State of Kerala (1973) 4 SCC 225
4. Law Commission of India: Report 101
5. State of Uttar Pradesh v. Raj Narain AIR 1975 SC 865
6. Union of India v Naveen Jindal (2004) 2 SCC476
7. American Communications Association v. Douds 94 L. Ed. 925
8. Chaplinsky v. New Hampshire MANU/USSC/0058/1942
9. United States Constitution: 1st Amendment
10. Indian Express Newspapers (Bombay) Private Limited and Ors. v. Union of India (1985) 2 SCR 287
11. Sakal Papers (P) Ltd. and Ors. v. Union of India (1962) 3 S.C.R. 842
12. The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia (1960) 2 S.C.R. 821
13. Regina v. Hicklin L.R. 2 Q.B. 360 (1868)
14. RanjitUdeshi v. State of Maharashtra (1965) 1 S.C.R. 65
15. Director General, Directorate General of Doordarshan v. AnandPatwardha 2006 (8) SCC 433
16. Dr. Ram Manohar Lohia v. State of Bihar and Ors. (1966) 1 S.C.R. 709
17. Schenck v. United States 63 L. Ed. 470
18. Abrams v. Unites States 250 U.S. 616 (1919)
19. S. Rangarajan v. P. Jagjivan and Ors. (1989) 2 SCC 574
20. Winters v. People of State of New York 92 L. Ed. 840
21. State of Madhya Pradesh v. Kedia Leather & Liquor Ltd. 2003 7 SCC 389
22. State of Karnataka v. AppaBaluIngale 1995 Supp. (4) SCC 469
23. R. Rajagopal v. State of T.N. (1994) 6 SCC 632
24. S. Khushboo v. Kanniammal (2010) 5 SCC 600
25. The Collector of Customs, Madras v. NathellaSampathuChetty and Anr. (1962) 3 S.C.R. 786
26. K.A. Abbas v. The Union of India and Anr (1971) 2 S.C.R. 446
27. RomeshThapar v. State of Madras (1950) SCR 594