WHO SUPPRESSES OUR RIGHT TO FREEDOM

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Introduction

Before getting into the points of interest of Section 66A, Justice Rohinton F. Nariman while dealing with the case of Shreya Singhal v. Union of India[1] invested some energy investigating the idea of the right of free speech and expression. Taking assistance of a terse passage from William Shakespeare's 'Julius Caesar', he clarified that "the three crucial parts of the right to speech and expression were discussion, advocacy, and incitement". In the perspective on the court, the insignificant discussion or advocacy of a particular cause, regardless of how evil, would dependably be secured by the privilege to the right to speech and expression. It is just when either talk or promotion achieves a certain degree of incitement that restrictions kick in[2].

This incredible verbalization of the essential right in all respects encompasses the zone inside which the legislative body can enact a statute. As a guideline, it will be equipped for being connected over a wide scope of conditions where freedom of expression is in peril.

At the point when the Court analyzed the provisions of Section 66A, with regards to this rule the Section did not separate between a mere discussion of a point of view and the utilization of that perspective to incite prohibited activities. This as per the Court conflicted with the spirit of 'freedom of speech and expression' and obstructed the free progression of opinions and thoughts.

The Court proceeded to hold that Section 66A can't be justified under the special cases on grounds of the right to freedom of speech and expression under Article 19(2), for example, defamation, criticism, incitement to an offence, decency, and morality. The Court refused to acknowledge that the Section had been authorized out of a legitimate concern for 'public order' given that it covers inside its extension, two messages to people as mass messages. It would not enable the Section to be secured under the exemption for defamation since it didn't fret about damage to reputation. The Section did not fall inside the exemption conceded to anticipate the

[1] AIR 2015 SC 1523.
[2] Trilegal, *Supreme Court Upholds Freedom of Speech on the Internet*, LEXOLOGY, (Mar. 30, 2016), available at https://www.lexology.com/library/detail.aspx?g=9c25c4f8-63db-405c-a599-64e3440eb91a.

'incitement to an offence' since it tries to control all data regardless of whether it 'incites' anybody or not.

From various perspectives, this was the choice that the Internet community in the nation was seeking. For a country that as of late embraced this new medium, it was a genuinely necessary jolt. While this part of the judgment will have no immediate bearing on the conduct of internet-based social media organizations, it may still urge an individual to express their perspectives on these stages without fear of backlash. A significant number of these organizations are devoted to securing the right to free speech around the globe and they have to the summit to the court the biggest markets upon which they firmly maintain their business.

What is Section 66A?

The original Act of 2000 did not contain Section 66A and the same was brought to the Act by an amendment in 2008. Segment 66A provides contours of the discipline to be followed while sending "offensive" messages through a computer or some other electronic gadget like a phone or a tablet. It is a penal provision and a conviction under this Section may imply imprisonment of as long as three years along with fine. It is reproduced as follows:

"Section 66A: Punishment for sending offensive messages through communication service, etc[3]. 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,
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 purpose of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer,

[3] The Information Technology (Amendment) Act, 2000, No. 28, Acts of Parliament, 2008 (India).

computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message."

Leading Case Law: Shreya Singhal v. Union of India

A bench of justices Chelameswar and R F Nariman JJ. Said that "the people right to know is legitimately affected by section 66A of the Information Technology Act." In that context, they termed liberty of thought and expression as "cardinal".

The principle issue dealt by the court here was to determine if Section 66A of IT (Amendment) Act, 2008 damaged the right to freedom of expression ensured under Article 19(1)(a) of the Constitution of India. While granting the said right Article 19(2) also licenses the legislature to force "reasonable restrictions . . . in light of a legitimate concern for the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or concerning contempt of court, defamation or incitement to an offence."

The obvious contention of the petitioners was that Section 66A was unconstitutional. The contended grounds for the same, principally being that its intended protection against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will fell outside the purview of Article 19(2). It was further contended that the law was unconstitutionally vague and unclear and that it failed to specifically define its prohibitions. Very interestingly it was also argued that the law has a "chilling effect" on the right to freedom of expression.

The argument is given by the government, on the other hand, was that it is the parliament duty and it is in the top position to address the needs of individuals and that the courts must intervene with the authoritative procedure only when "a statute is violative of the rights presented on the citizen under Part-III of the Constitution." The government contended that mere presence of the possibility of abuse of a provision cannot be a ground to adjudge a provision as unlawful. Additionally, the government was of the view that merely because the language used in law is free it cannot be the sole ground for invalidating it, especially when circumstances so require. It may be because the lawmakers are worried about the novel techniques which may be developed for aggravating individuals' rights through the medium of the internet. As indicated by the

government, vagueness cannot be a ground to announce a statue illegal especially "if the statue is generally legislatively competent and non-self-arbitrary."

The Court initially talked about three key ideas in understanding the freedom of expression, namely, "discussion, advocacy, and incitement". It held as discussed before that "mere discussion or even advocacy of a particular cause howsoever unpopular, is at the heart" of the right. And, the law may abridge the freedom just when a discussion or advocacy adds up to incitement.

Perspicaciously, the Court found that Section 66A is equipped for restricting all types of internet communication since it sees no difference " 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, the security of State, etc." The Court further held that the law fails to establish a reasonable relation to the protection of public order as is a pre-requisite. It was decided to be very wide as the commission of an offence under Section 66A is finished by merely communicating something which may cause annoyance or insult. In simple words, it was highlighted that the law does not make any qualification to identify and distinguish mass dissemination and dissemination to a single individual without requiring the message to have a reasonable inclination of upsetting public disorder.

The question also arose whether 66A is a substantial endeavour to shield people from defamatory statements. It was noted that the principal element of criticism is "damage to reputation." The court brought to light the fact that the impugned provision was not concerned with this objective since it likewise denounced offensive explanations that may disturb or be inconvenient to a person, these, however, may or may not influence or defame one's reputation.

As to petitioners' challenge of unclearness, the Court convincingly perused the U.S. judicial precedent[4], which beautifully lays down that "where no reasonable principles are set down to characterize responsibility in a Section which makes an offence, and where no clear direction is given to either law-abiding citizens or administrators and courts, a Section which makes an offence and which is so obscure must be struck down as being self-assertive and outlandish." On

[4] *Whitney* v. *California*, 71 L. Ed. 1095; *Abrams* v. *United States*, 250 US 616 (1919).

that line, the Court found that Section 66A leaves numerous terms open-ended and unclear which only logically invite it is being rendered void on account of vagueness.

The Court then turned to the issue as to whether Section 66A is fit for being adjudged as imposing a chilling impact on the right to freedom of expression. It held that in light of the fact that the provision neglects to characterize terms, for example, inconvenience or annoyance, "a very large amount of protected and innocent speech could be curtailed" and so it does have a chilling effect. The Court finally noted the intelligible difference between data transmitted through web and other forms of speech, which allow the legislature to make separate offences identified with online communication.

Also, the Court dismissed petitioners' contention that Section 66A was infringing upon Article 14 of the Constitution.

Current Position of the Law

Today, approximately five years have passed since this provision was struck down and yet the state of affair remains that the police in different states is booking individuals under this section. In contemporary times when data spreads like forest-fire, the Indian police seem to have difficulty updating itself about the calling down of this section. It doesn't seem to have access to updated law books and data and so it does not maybe realize that Section 66A is illicit and it is fairly contemptuous to book and arrest individuals under this non-existent provision.

In only March 2017 which is two years after the judgment, one Zakir Ali Tyagi who is an 18-year-old belonging from Muzaffarnagar, Uttar Pradesh was charged and arrested under Section 66A of the IT Act for voicing his view on social media about Uttar Pradesh Chief Minister Yogi Adityanath. He had strong opinions about certain political events which invited the wrath of this section which fairly demonstrate exactly how this section is dangerous and can be ill-used. He seemed to have downplayed the Ganga being proclaimed a "living entity" and discussed BJP's guarantee of building a Ram Mandir and questioned the non-revocation of Haj appropriation given to Air India. For a social media post, Zakir Ali Tyagi, according to him has to go through 42 days in Muzaffarnagar prison with hardened criminals where he needed to pay money even to

use the washroom. He was additionally booked under the Indian Penal Code's Section 420 (cheating).[5]

Another incidence came one year down the line in October 2018. Here, Veeramreddy Suman Reddy from Guntur, Andhra Pradesh was charged under provisions of 66A. He is an MTech graduate and a case was registered against him again for cheating and misleading people through electronic communication (Section 66A). According to the police report the accused by impersonating himself as a beautiful woman on an online dating app used to extort money from people on a dating application which remained end- to- end encrypted.[6]

These cases not only show the failure of police administration but also just show how wide the section is. One of the instances showing its wide amplitude is where a Chemistry professor of Jadavpur University, Professor Ambikesh Mahapatra, was charged under Section 66A of IT Act in 2012. The preliminary for his situation is as yet going on under Section 66A of the IT Act, while charges under every single other section have been dropped. His offence was 'sending to his colleagues an animation mocking Ms Mamata Banerjee'. The Calcutta High Court ordered the Mamata Banerjee government to give Prof. Ambikesh Mahapatra a compensation decreed by the State Human Rights Commission and an additional Rs. 25,000 for legal expenses. The state government had ignored the order and the state was supposed to pay Prof Mahapatra and Mr Sengupta a total of Rs. 75,000 each.[7]

More recently controversies arose in May 2019 when Ms Priyanka Sharma a BJP worker was arrested and remanded to judicial custody. The charges against her include one under Section 66A of Information Technology Act, 2000. This was again for sharing a meme on West Bengal Chief Minister Mamta Banerjee on social media. The Apex Court had to intervene and hold that

[5] PTI, *18-Year-Old Spends 42 Days in UP Jail for Social Media Posts*, THE HINDU (Oct. 11, 2017, 13:30) available at https://www.thehindu.com/news/national/other-states/18-year-old-spends-42-days-in-up-jail-for-social-media-posts/article19838509.ece.
[6] Ujwal Bommakanti, *How A Techie Grad Cheated 507 People Through A Dating App*, TIMES OF INDIA, (Sept. 28, 2018, 19:29) available at https://timesofindia.indiatimes.com/city/amaravati/heres-how-an-m-tech-grad-cheated-507-people-through-dating-app/articleshow/65996837.cms.
[7] Monideepa Banerjie, *Professor Jailed for Circulating Mamata Cartoons to be Compensated, Says Court*, NDTV, (Mar. 10, 2015, 22:51) available at https://www.ndtv.com/india-news/double-the-compensation-of-jadavpur-professor-arrested-for-circulating-mamata-cartoons-court-tells-g-745593.

if Priyanka Sharma has not been released immediately the court will issue contempt notice against the state government. [8]

Such cases in India is still taking place and police bluntly ignoring the Apex court judgement.[9] But the most shocking news came in July 2020 when a High Court itself refused to quash the FIR which was filed under unconstitutional Section 66A of the IT Act. The matter was related to a person named Rohit Singhal who approached the court to quash FIR which was registered against him under the Essential Commodities Act and 66A of the IT Act. The petitioner has mentioned Shreya Singhal Judgement but the Division Bench of High Court instead directed the petitioner to cooperate with the police investigation and ordered that till filing of the police report he will not be arrested. This is happening in when Apex Court itself last year directed all secretary of state and UTs to provide a copy of Shreya Singhal Judgement to all the courts and DGPs.[10]

It raises a genuine concern if no official notice was issued by the Central Government and disseminated among all police headquarters following the judgment. Mocking is one thing but the police cannot be expected to keep up with all the law in the absence of official training and intimation, given the situations of our country. Also, how are the police to keep up law and order on the off chance that they do not themselves know about it? More importantly what recourse is left to a common man booked for days in judicial custody whose only crime is to exercise his fundamental right of freedom and expression.

Does the government require special order by the courts to circulate the order? Is the government not at all required to guarantee consistency of the law set down by the court in letter and spirit? The opportunity has already come and gone that the issue is pondered upon and essential advances are taken to guarantee that nobody endures any police activity under Section 66A of the Information Technology Act, 2000 which was announced illegal somewhere years back.

Measures to Be Taken

[8] '*BJP Worker Priyanka Sharma released from jail, SC pulls up Mamta govt for the delay*', INDIA TODAY (May 15, 2019, 13:26) available at https://www.indiatoday.in/india/story/bjp-priyanka-sharma-released-from-jail-sc-pulls-up-mamata-govt-for-delay-1525358-2019-05-15.
[9] See CRIMINAL MISC. WRIT PETITION NO.- 6496 OF 2020.
[10] Peoples' Union for Civil Liberties v. Union of India available at supremecourt/2018/44324/44324_2018_Order_15-Feb-2019.

For the efficient running of government machinery, the governments both at the center and state must officially communicate all the important pronouncement by the courts to all the concerned police headquarters. State governments have to maintain law and order in the state so the government at the state must take sufficient steps to educate its police personnel about the new enacted law or laws which are struck down.

Apart from the above basic measure, the following measures must be taken to ensure that the fundamental rights of the individuals are not infringed and people can enjoy their rights freely:

(i) If the Ministry of Home Affairs, Union of India takes upon itself to issue advisories with immediate effect to all the states there may be built enough pressure upon the police personnel to act upon such order. Also, such centralization and specialization would increase efficiency and effectiveness.

(ii) Immediate action must be pursued against the police personnel who may commit such blunder. Unfortunately, no action has been taken against any police personnel in the above-mentioned incidents.

(iii) For the smooth running of administration, people for whom the law is enacted must be aware of their rights and freedoms. Without wide publicity of the advisory to the public at large, it cannot be expected that these can be effectively exercised by a being unless he meets a lawyer.

(iv) A law such as 66A of Information Technology Act, 2000 or any other such law which puts people in fear of exercising a right as fundamental as that of the right of free speech and expression must be looked upon stringently. A fear amongst people that if they express their opinion or ideas howsoever lawfully, they may be sent to prison is the very point where democracy fails.

"Freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed."