

**CASE COMMENTARY ON SHREYA SINGHAL V. UNION OF INDIA  
AIR 2015 SC 1523**

**\*DIVYANSHI KHEMKA**

With the advent of the age of the internet, societies have had to grapple with various unforeseen challenges. For a democratic republic country like India that bestows upon its citizens certain fundamental rights, one of the biggest challenges has been to balance the safeguarding of rights of the individuals while also battling with the plethora of threats to individual and national security that the internet and electronic communication brings with itself.

In the last two decades, we have seen a reform in almost all the prevailing laws to keep pace with the evolving technology. While technology has been adopted to streamline and aid governance, provisions have also been incorporated in the country's penal codes to ensure that there is no misuse of technology in a way that hampers the safety and security of the country and its citizens.

Keeping the unity and sanctity of the nation intact and enacting legislation in this regard is one of the key functions of the government. However, in the past few decades, we have seen that governments have often transgressed beyond the powers accorded to them by the constitution of India in an attempt to safeguard national interests. Legislative and policy changes have been enacted in a way that allows the people in power to erroneously penalize the individuals who question them or criticize them in the name of national security. Such provisions violate an individual's rights, specifically, the right to freedom of speech, which is enshrined in the Constitution of India under Article 19 of Part 3. To strike a balance between the reasonable restrictions considering which this right may be violated under Article 19 (2) and the unfettered power of the state to infringe upon these rights is something that our country has struggled with vigorously over the past few decades. The judiciary of the country has often had to step in to define the ambit within which the state may make laws that would curb the freedom of speech and expression under reasonable restrictions. Therefore, the Supreme Court has interpreted this article of the Constitution in multiple judgments.

When talking about freedom of speech and expression in the age of the internet, the 2015 case of *Shreya Singhal v. Union of India* comes to the forefront of such a discussion. It was in this case that the Hon'ble Supreme Court took a definitive step in the direction of safeguarding individual rights to freedom in the light of fast-developing internet technology. It is important to understand the judicial decision in this case to gauge how the country's judiciary attempts to balance individual rights against national security and the state's legislative powers.

The main point of contention in *Shreya Singhal v. Union of India*, AIR 2015 SUPREME COURT 1523, was Article 66A of the Information Technology Act, 2000, which provided for "Punishment for sending offensive messages through communication service, etc.". This section was added to the IT Act by way of the 2008 Amendment. It stated that "Any person who sends by any means of a computer resource any information that is grossly offensive or has a menacing character; or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult shall be punishable with imprisonment for a term which may extend to three years and with fine".

The petitioners argued that the terminology used in this section was ambiguous and gave unbridled power to the state to violate an individual's right to freedom of speech and expression, enshrined under Article 19 of the Constitution of India. The petitioners cited various judgments and Article 19 of UDHR to assert that the right enshrined under Article 19 of the Constitution of India was of paramount importance and that it was being infringed upon by Section 66A of the IT Act. Another ground of contention was that the terms used in Section 66A of the IT Act did not fall within the ambit of reasonable restrictions mentioned under Article 19 (2). The respondents argued against all the contentions of the petitioners, asserting that the legislature was in the best position to determine the law in accordance with the needs of the people. They contended that the statute cannot be declared unconstitutional merely on the grounds of vagueness or ambiguity in a certain provision.

The two-judge bench of the Hon'ble Supreme Court, in a reasoned order, ruled in favour of the petitioner, holding Section 66A of the IT Act unconstitutional for being violative of the right to freedom of speech and expression enshrined under Article 19 of the Indian Constitution. The judgment recognized the harmful effects of arbitrary language used in Section 66A and made a clear distinction between hate speech and free speech. The court delved into 3 different dimensions of freedom of speech: discussion, advocacy, and incitement, observing that when discussion or advocacy reaches incitement of an offense, that is when restriction of freedom applies. The court applied the doctrine of severability and declared that only Section 66A of the IT Act was invalid as it was inconsistent with Part 3 of the Constitution. The rest of the act was held constitutional.

The judgment in *Shreya Singhal v. Union of India* is considered a landmark in the realm of enforcement of fundamental rights in the 21<sup>st</sup> century. It was the first major decision involving penal law pertaining to electronic communication. There have been multiple judgments on the interpretation of the right to freedom of speech and expression prior to this case, however, what sets this judgment apart is the involvement of the Internet as the medium of communication of information. The internet is a space that makes information available to anyone, anywhere almost instantly. It breaks all geographical and physical limitations, which is why it becomes all the more important to regulate this space. However, as asserted by the Hon'ble Supreme Court of India in this judgment, fundamental rights cannot be infringed arbitrarily in an attempt to regulate the Internet and any legislation enacted that gives such unfettered power to the state will be deemed unconstitutional.