

**DE JURE NEXUS LAW JOURNAL**

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**FREE SPEECH IN VIRTUAL WORLD AND CONSTITUTION OF INDIA****ABSTRACT:**

*Free speech is one of the crucial fundamental rights given to each and every Indian citizen. The constitution of India guarantees this right in article 19. At the same time the article elaborates upon the restraints on free speech. However, IT ACT 2011 and Information technology (intermediary guidelines and digital media ethics code) rules, 2021 have created hindrance in the path of this fundamental right by imposing unreasonable restrictions. This was because both of these rules are vague and can provide the government with arbitrary power. The right to free speech is to carried out without any censorship from the government or any organization. The person who is expressing himself should not have to worry about any retaliation on him due to his proclamations. But these laws violate the fundamental right of free speech. Shreya Singhal, a lawyer, filed a PIL regarding the same and it has evolved the IT Act, 2011. In this research paper, we will be discussing and elaborating upon the same.*

**KEYWORDS:**

*Fundamental right, Article 19, unreasonable restrictions, vague rules, arbitrary power, censorship.*

**INTRODUCTION:**

Six essential rights are guaranteed to all Indian citizens under the Indian constitution. These essential rights are contained in several articles of the Indian constitution. One of these is the right to freedom of speech and expression.

This encompasses freedoms such as the freedom to have uncensored opinions and the freedom to seek, receive, and transmit information and ideas through any medium and across all borders. The mode can be oral/ written/ electronic/ broadcasting/ press or others.

Press freedom, commercial speech freedom, the right to broadcast, the right to information, the right to criticism, the right to convey oneself beyond national borders, the right not to speak, and the right to quiet are all included in freedom of speech and expression. This encompasses freedoms such as the freedom to have uncensored opinions and the freedom to seek, receive, and transmit information and ideas through any medium and across all borders. The mode can be oral/ written/ electronic/ broadcasting/ press or others.

Press freedom, commercial speech freedom, the right to broadcast, the right to information, the right to criticism, the right to convey oneself beyond national borders, the right not to speak, and the right to quiet are all included in freedom of speech and expression.

This means that every person has the right to freely express themselves. Freedom of speech and expression is to be carried out without any censorship from the government or any organization. The person who is expressing himself should not have to worry about any retaliation on him due to his proclamations. He should not receive any threats indicating fear of his life or injury or be subject to imprisonment for his statements

This isn't, however, an absolute individual right. It envisions legal constraints on this right that are reasonable. One should not say anything derogatory or falsely slander someone, and he should not infringe on anyone's rights. As a result, it is fair to say that freedom of speech and expression is a complicated right.

### **WHAT IS FREE SPEECH IN LEGAL TERMS?**

As per article 19 (1)(a) of the Indian constitution – “*All citizens shall have the right to freedom of speech and expression.*” The restrictions upon these rights can be seen in article 19(2) of the Indian constitution – “*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 in relation to contempt of court, defamation or incitement to an offence.”<sup>1</sup>*

### **STATUTORY PROVISION OF SECTION 66A OF IT ACT, 2000:**

An expert group was formed in 2005 to study the Act and address the need for cyber forensics and cybercrime regulation. In 2009, the Act was updated to address a variety of cybercrimes, including sending abusive emails and multimedia communications, child pornography, cyber terrorism, publishing sexually explicit materials in electronic form, video voyeurism, and e-commerce scams such as phishing and identity theft. The law was intended to combat cybercrime against women, particularly those who sent "vulgar mobile phone SMSs to ladies." Section 66A was incorporated into the Act as a result of this modification, and it went into effect on October 25, 2009. The 2009 amendment was passed by the Lok Sabha in under 6 minutes, with no argument.<sup>2</sup>

As per the section 66A of IT Act, 2000 – *“Punishment for sending offensive messages through communication service, etc.--Any person who sends, by means of a computer resource or a communication device,*

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*(a) any information that is grossly offensive or has menacing character; or*

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*(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;*

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*(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.*

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<sup>1</sup> INDIA CONST. art. 19, cl. 2

<sup>2</sup> Internet freedom foundation, AVAILABLE AT: <https://internetfreedom.in/how-a-bill-becomes-a-zombie-the-journey-of-section-66a-of-the-information-technology-act-2000/> (last visited Feb. 15, 2022)

*Explanation. --For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."*

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### **MISUSE OF SECTION 66A:**

Although the goal of the 2008 modification was to prohibit the exploitation of information technology, notably through social media, the petitioners stated that Section 66A had unusually broad limitations, allowing law enforcement agencies to understand it in their own way. Most of the categories used in the provision were not defined in the Act, and the petitions stated that the statute may be used to stifle genuine free expression online and constrain constitutionally protected freedoms of speech and expression, going well beyond the scope of "reasonable restrictions." The fundamental question was whether Section 66A of ITA infringed the right to freedom of expression granted under Article 19(1)(a) of the Constitution of India.

The Petitioners claimed that Section 66A was unconstitutional since it was intended to protect people from irritation, discomfort, danger, obstruction, insult, harm, criminal intimidation, or ill-will outside the purview of Article 19(2). Furthermore, they claimed that the regulation has a "chilling impact" on freedom of speech and expression.<sup>4</sup>

The issue was that there was no clear definition of what was "offensive." With such a broad sense, the term might be interpreted in a variety of ways. It was considered as subjective, and what could have been harmless to one person could lead to a complaint from another and, as a result, an arrest under Section 66A if the police presumptively agreed with the latter person's point of view.<sup>5</sup>

Almost everything may be censored nowadays. Second, they effectively give private censorship more authority. Anyone can object to content, and you might be held accountable if you don't

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<sup>3</sup> Navroop blogspot, AVAILABLE AT: <https://navroops.blogspot.com/2012/11/free-speech-in-cyberspace.html?cv=1> (last visited Feb. 15 2022)

<sup>4</sup> Cyber crime lawyer, AVAILABLE AT: <https://cybercrimelawyer.wordpress.com/tag/no-arrest-in-sec-66-a-it-act-now/> (last visited Feb. 15, 2022)

<sup>5</sup> Ipleaders, AVAILABLE AT: <https://blog.ipleaders.in/decoding-section-66a-act-need-deletion/?nonamp=1> (last visited Feb. 15, 2022)

remove or block the item. There is no requirement for a government authority to be engaged in the IT regulations; you can have information deleted without a court order or other monitoring. The procedure is never scrutinized or open to the public. The IT Act contains no "put back" clause or other remedy for those whose content has been restricted. Under the present standards, there is a complete lack of transparency and supervision. It is feasible to act without notifying the content originator or to prohibit content without the involvement of the government.

### **HOW DID SECTION 66A OF IT ACT, 2000 CAME IN THE EYES OF LAW?**

After the arrest of two females in Maharashtra by Thane Police in November 2012 over a Facebook post, the first appeal was filed in court. The girls had made comments about Mumbai being closed down for Shiv Sena president Bal Thackeray's funeral. The arrests sparked outcry from many corners due to the way the cyber legislation was used. Despite the fact that the women were ultimately freed and their charges were dropped, the episode drew widespread media coverage and outrage. The ladies then filed a petition contesting Section 66A's constitutional legitimacy, claiming that it infringes on their right to freedom of speech.

Shreya Singhal, a 21-year-old law student at the time, filed the petition. In *Singhal v. Union of India*, (2013) 12 S.C.C. 73, the Supreme Court of India issued a preliminary order banning any imprisonment under Section 66A unless it was supported by top police authorities. The Court was asked to rule on the validity of the clause in this case. Ambikesh Mahapatra, a Jadavpur University lecturer who was imprisoned for posting cartoons of Trinamool Congress head Mamata Banerjee on Facebook, was among the other petitioners. Azeem Trivedi, an activist, was detained for making cartoons mocking Parliament and the Constitution in order to demonstrate their inefficiency. Mayank Sharma, an Air India employee, and K V Rao, a Mumbai resident, were detained for allegedly making insulting comments against politicians on their Facebook group.<sup>6</sup>

### **Judicial interpretation of Shreya Singhal v. Union of India, (2013) 12 S.C.C. 73**

On 24 March 2015, the Hon'ble Supreme Court of India (Supreme Court), in the matter *Shreya Singhal v. Union of India*<sup>[1]</sup>, passed a decision on the constitutional validity of section 66A of the

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<sup>6</sup> Indian express, AVAILABLE AT: <https://indianexpress.com/article/explained/explained-the-shreya-singhal-case-that-struck-down-section-66a-of-it-act-7408366/> (last visited Feb. 15, 2022)

Information Technology Act, 2000 (IT Act) and section 118(d) of the Kerala Police Act, 2011 which contained language similar to section 66A of the IT Act.

**MAIN ARGUMENTS WRITTEN IN WRIT PETITIONS:** The Petitioners had highlighted the following issues in their writ petitions: that the basic reason for introducing Section 66A into the IT Act, namely, to deal with new types of crime, was erroneous, and that the existing sections of the Indian Penal Code already dealt with such offences. Section 66A violates the fundamental right to free expression and was not spared by any of the eight areas mentioned in Article 19(2) of the Indian Constitution, including public order, defamation, provocation of offence, and decency or morality. Because section 66A is a criminal statute, it should have been more specific in characterizing the offence and not as unclear as it is now. That Section 66A was likely to be overturned because it discriminated against those who communicated through different mediums, such as radio, television, and the internet, as opposed to print, broadcast, and real-time speech, with no discernible difference. Section 66A had procedural flaws and was unreasonable since it did not give the safeguards provided by Criminal Law, namely, cognizance upon a complaint and a restriction period on filing such complaint.

**JUDEGMENT:** In response to petitioners' claim of lack of clarity, the Court decided to follow US legal precedent, holding that "where no reasonable standards are laid down to define guilt in a Section which creates an offence, and where no clear guidance is given to either law abiding citizens or authorities and courts, a Section which creates an offence and is vague must be struck down as arbitrary and unreasonable." The Court determined that several phrases in Section 66A are left wide and ambiguous, rendering the legislation unconstitutional for vagueness. The Court also considered whether Section 66A had the potential to stifle the right to freedom of speech. It was determined that because the clause does not define concepts like discomfort or irritation, "a very vast quantity of protected and harmless expression" might be restricted. The Supreme Court of India ruled on March 24, 2015, that Section 66A is unconstitutional in its totality for the aforementioned reasons. The court ruled that Section 66A of the Information Technology Act of

2000 "arbitrarily, unduly, and disproportionately infringes on the right to free expression" guaranteed by Article 19(1) of the Indian Constitution.<sup>78</sup>

### **PROBLEMS WITH INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021 –**

On Monday, two lawsuits opposing aspects of the Information Technology (IT) Rules, 2021 were lodged in the Bombay High Court, claiming that the regulations were "ambiguous" and "harsh." The IT Rules will also have a "chilling impact" on media freedom and citizens' constitutionally protected right to free speech. The new laws seek, along with other things, to enforce a number of limitations on information published online by citizens, journalists, and digital online news, as well as to demand responsibility and grievance resolution from social media platforms. For the first time, there is a bold content regulation. These restrictions go beyond the scope of the Information Technology Act. The regulations also go far beyond Article 19's free expression safeguards.

The guidelines, for example, prevent media companies from conducting sting operations without proof, and they mandate that no derogatory information about public figures be published. The rules, on the other hand, do not define what constitutes enough evidence or what defines defamatory text. By granting authority to a ministerial committee, these laws aim to effectively monitor and regulate online expression. It is the most severe anti-free speech legislation in modern years. The regulations were arbitrary, unlawful, and infringed on citizens' rights to privacy, freedom of expression, commerce, and liberty.<sup>9</sup>

Whether under international or domestic law, the limitations must be imposed by legislation (a statute enacted by the legislature) and should be precise enough to allow a person to govern his or her behaviour properly. In this regard, terms like "racially or ethnically objectionable," "harmful to children," "impersonates another person," "threatens the unity... of India," "is patently false and

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<sup>7</sup> Counter currents, AVAILABLE AT: <https://countercurrents.org/2021/06/it-rules-2021-un-rapporteurs-see-chilling-effect-on-freedom-of-expression/?cv=1> (last visited Feb. 15, 2022)

<sup>8</sup> Shreya Singhal v. Union of India, (2013) 12 S.C.C. 73

<sup>9</sup> Economic times, AVAILABLE AT: <https://economictimes.indiatimes.com/news/india/new-it-rules-draconian-will-have-chilling-effect-on-free-speech-petitioners-tell-hc/articleshow/85177145.cms?from=mdr> (last visited Feb. 15, 2022)

untrue," "is written or published with the intent to mislead or harass a person to cause any injury to any person," "is written or published with the intent to cause any injury to any person," are overly broad and lack sufficiently clear definitions and may lead to arbitrary application.

The majority of the phrases in the Rules 2021 do not give enough advice on the conditions under which material may be prohibited, withdrawn, or limited, or accessibility to a service may be restricted or terminated, therefore failing to meet the legality criterion under international human rights law. The right to free expression is not absolute. Only the circumstances stated in Article 19(2) allow the Parliament to impose reasonable limits. Neither the PMO nor the Ministry of Information and Broadcasting enforces any additional limits via subordinate legislation such as rulemaking. The Indian government is attempting to steal Parliament's sovereignty and control the media through the Rules, rather than a legislation approved in accordance with procedure.<sup>10</sup>

Articles 17 and 19 of the International Covenant on Civil and Political Rights, to which India acceded in 1979, seem to just not fulfil the criteria of international law and norms pertaining to the rights to freedom of thought and expression and the right to privacy. According to Article 19 (3) of the ICCPR, limits on the right to freedom of speech must be "*expressly established by law*" and required "*for the preservation of national security or public order, or of public health or morality*" or "*for the respect of the rights or reputations of others.*"<sup>11</sup>

### **CONCLUSION:**

To conclude everything, Free speech is a fundamental right provided to every Indian citizen irrespective of their caste, sex, age, religion and so on. However, IT ACT, 2000 violated this by introducing section 66a through amendment. Shreya Singhal, a law student at that time, filed a PIL regarding the same and somehow section 66a got removed. A few years later, again a new IT ACT that is the information technology (intermediary guidelines and digital media ethics code) rules,

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<sup>10</sup> The hans india, AVAILABLE AT: <https://www.thehansindia.com/hans/opinion/news-analysis/it-rules-2021-un-rapporteurs-see-chilling-effect-on-freedom-of-expression-691914> (last visited Feb. 15, 2022)

<sup>11</sup> Wikipedia, AVAILABLE AT: [https://en.wikipedia.org/wiki/Information\\_Technology\\_Rules,\\_2021#:~:text=The%202021%20rules%20have%20stemmed,of%20Ethics%20for%20Digital%20Media.&text=Intermediaries%20had%20until%2025%20May%202021%20to%20comply%20with%20the%20rules](https://en.wikipedia.org/wiki/Information_Technology_Rules,_2021#:~:text=The%202021%20rules%20have%20stemmed,of%20Ethics%20for%20Digital%20Media.&text=Intermediaries%20had%20until%2025%20May%202021%20to%20comply%20with%20the%20rules) (last visited Feb. 15, 2022)



2021 violated this fundamental right. It needs to be taken care of. No final decision regarding the recent act have been made yet.



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