

# Legal Responses to Online Hate Speech in India: Evaluating Section 66A and the Supreme Court's Judgment in *Shreya Singhal v. Union of India*

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## Abstract

This paper critically examines India's legal responses to online hate speech through the lens of Section 66A of the Information Technology Act, 2000, and the landmark Supreme Court judgment in *Shreya Singhal v. Union of India* (2015). By tracing the evolution of Section 66A from its enactment to its judicial invalidation, the study highlights how vague legal provisions have been employed to suppress dissent in the digital space. The judgment in *Shreya Singhal* marked a doctrinal shift in Indian free speech jurisprudence by introducing constitutional tests of proportionality, precision, and incitement thresholds. Yet, post-judgment developments reveal persistent regulatory gaps, including the continued application of the repealed law and the emergence of executive-led content regulation under the IT Rules 2021. This paper argues for a reimagined legal framework grounded in rights-based, transparent, and procedurally robust safeguards that respect the normative centrality of freedom of expression in India's digital democracy.

**Keywords:** Section 66A, online speech, *Shreya Singhal*, hate speech regulation, Indian Constitution, digital censorship, IT Rules 2021

## 1. Introduction

The rapid expansion of internet access and social media platforms in India over the past two decades has dramatically reshaped the public sphere, bringing previously marginal voices into national discourse. With over 850 million internet users as of 2024, India hosts one of the largest digital populations globally, and online spaces—particularly Facebook, WhatsApp, Twitter (now X), and YouTube—have emerged as critical arenas for political debate, protest mobilization, and cultural expression. Yet this digital empowerment has also intensified

challenges around hate speech, misinformation, and incitement, sparking heated debates over the proper limits of free expression in a democratic society.

India's Constitution enshrines freedom of speech and expression as a fundamental right under Article 19(1)(a), subject to reasonable restrictions outlined in Article 19(2), including those related to public order, decency, morality, and incitement to offenses. However, the interpretation of "reasonable" in a digital context has proven contentious. Unlike traditional speech, online communication is

instantaneous, transregional, and algorithmically amplified, making harmful speech not only more visible but more virulent in effect.

The state's legal response to this transformation has oscillated between protectionist paternalism and coercive censorship. Legislators and enforcement agencies have often invoked vague or broad statutory language to regulate online content, frequently under the guise of preventing unrest, protecting sentiments, or combating threats to national security. Critics argue that such legal instruments often blur the line between hate speech and political dissent, allowing the state to suppress criticism under pretexts of law and order.

This tension came to a head in the early 2010s with the proliferation of arrests under Section 66A of the Information Technology Act, 2000, a provision criminalizing online communication deemed "grossly offensive" or "of menacing character." The law was widely applied against students, journalists, satirists, and activists, fueling accusations of authoritarian overreach. Its enforcement triggered alarm across civil society, culminating in judicial intervention in the landmark *Shreya Singhal v. Union of India* case.

Thus, any analysis of India's legal response to online hate speech must begin by acknowledging the triangular conflict between:

- Technological acceleration of speech dissemination
- The democratic imperative of free expression
- The state's attempt to regulate the digital sphere through statutory authority

The story of Section 66A, its downfall, and the lingering regulatory vacuum left in its wake serves as a key episode in India's ongoing attempt to define the constitutional limits of digital speech in a time of unprecedented communicative flux.

## 2. Section 66A of the IT Act: Text, Application, and Controversy

Enacted through an amendment to the Information Technology Act in 2008, Section 66A was designed ostensibly to address the growing misuse of digital platforms to spread harmful or offensive content. The provision criminalized the sending of information via a computer

resource or communication device that was "grossly offensive," "menacing in character," or that caused "annoyance," "inconvenience," or "insult." Convictions could lead to up to three years of imprisonment and fines.

At a textual level, the provision was notable for its vague and subjective terminology, lacking clear definitions or thresholds for what constituted "gross offensiveness" or "annoyance." The provision's open-ended language—with no requirement for intent, harm, or public order disruption—stood in stark contrast to constitutional jurisprudence that requires speech-restrictive laws to be narrowly tailored and proportional.

In practice, Section 66A became a widely used tool for suppressing dissent and curbing legitimate speech. Between 2009 and 2015, numerous citizens were arrested for online posts criticizing politicians, questioning government policies, or sharing satirical content. Prominent cases include:

- Shaheen Dhada and Rinu Srinivasan (2012): Arrested in Maharashtra for Facebook posts questioning a citywide shutdown following the death of a political leader.
- Ambikesh Mahapatra (2012): A professor detained for forwarding a political cartoon via email.
- Cartoonist Aseem Trivedi (2012): Prosecuted for posting cartoons satirizing corruption.

According to data compiled by the Internet Freedom Foundation and NCRB records, over 3,000 cases had been filed under Section 66A by 2014. However, few of these resulted in convictions—highlighting its instrumental role in harassment and pretrial punishment, rather than actual legal resolution.

The public outcry intensified as civil society groups, legal scholars, and free speech advocates criticized the provision for enabling state-sponsored intimidation. The lack of judicial safeguards or statutory clarity gave law enforcement broad discretion to arrest individuals based on subjective offense, often triggered by political or religious sensitivities.

Further, the non-bailable and cognizable nature of the offense allowed for immediate detention without court approval, amplifying the chilling effect on digital speech. The constitutional

inconsistency of the law with Article 19(1)(a)—especially in terms of overbreadth and arbitrariness—formed the basis of legal challenges that culminated in *Shreya Singhal v. Union of India*.

In retrospect, Section 66A became emblematic of India's struggle to balance digital regulation with democratic accountability. Its trajectory from enactment to repeal reveals how legal instruments, when poorly crafted, can serve as vehicles of censorship rather than protection, underscoring the need for clarity, proportionality, and constitutional alignment in the governance of online expression.

### 3. *Shreya Singhal v. Union of India*: Constitutional Scrutiny and Doctrinal Shift

The landmark judgment in *Shreya Singhal v. Union of India* (2015) marked a watershed moment in India's digital free speech jurisprudence. Sparked by a series of publicized arrests under Section 66A of the Information Technology Act, the case was initiated through a Public Interest Litigation (PIL) by law student Shreya Singhal, challenging the constitutionality of the provision on the grounds that it violated Article 19(1)(a) of the Indian Constitution.

At the heart of the Court's deliberation was the tension between the state's obligation to maintain public order and the citizen's right to free expression in the digital realm. Section 66A, the petitioners argued, was vague, overbroad, and lacked proximate connection to any of the reasonable restrictions outlined in Article 19(2).

In a historic verdict, a two-judge bench of the Supreme Court (Justices J. Chelameswar and Rohinton Nariman) unanimously struck down Section 66A as unconstitutional in its entirety. The Court's reasoning centered on three key doctrinal developments:

#### (1) Vagueness and Overbreadth

The Court held that terms such as "*grossly offensive*," "*annoyance*," and "*menacing in character*" were constitutionally void for vagueness. Such language failed to provide clear guidance to citizens and law enforcement alike, leading to arbitrary and subjective application. Citing U.S. jurisprudence (e.g., *Grayned v. Rockford*), the Court reiterated that vague laws have a chilling effect on legitimate speech and are therefore incompatible with fundamental freedoms.

#### (2) Distinction Between Discussion, Advocacy,

#### and Incitement

Drawing from international free speech doctrine, the Court emphasized a tripartite framework:

- *Discussion* and *advocacy*, even if unpopular or offensive, are protected under Article 19(1)(a)
- Only *incitement to violence or public disorder* can be reasonably restricted

Section 66A, by criminalizing mere annoyance or offensive communication without reference to incitement or actual harm, failed this constitutional test.

#### (3) Proportionality and Lack of Nexus with Article 19(2)

The judgment asserted that a restriction on speech must have a direct and proximate link to the grounds enumerated in Article 19(2)—such as sovereignty, public order, or decency. Section 66A's broad sweep criminalized a range of expression without establishing such a nexus, rendering it disproportionate and excessive in scope.

The Court rejected the government's argument that the provision had a deterrent value against cyber threats, holding that no matter how laudable the goal, it cannot justify disproportionate means.

The judgment in *Shreya Singhal* not only invalidated a widely misused provision but also laid down a foundational jurisprudential framework for assessing future restrictions on digital speech in India. It reaffirmed that the internet is not an exception to constitutional protections and that legal instruments regulating speech must meet the highest standards of precision and necessity.

However, as later developments would reveal, the judgment's doctrinal clarity was not always matched by administrative enforcement, with police departments continuing to invoke Section 66A in thousands of cases even after its repeal—highlighting the gap between judicial articulation and regulatory practice, a theme explored in the following section.

### 4. Persisting Legal Gaps and Extra-Judicial Regulation Post-66A

Despite the categorical invalidation of Section 66A by the Supreme Court in *Shreya Singhal v. Union of India*, the implementation of the ruling has been erratic and incomplete, revealing structural deficiencies in India's

speech-regulatory ecosystem. The post-judgment period is marked by two troubling trends: the continued use of repealed legal provisions and the emergence of new, often opaque regulatory instruments that bypass traditional legislative scrutiny.

### **Continued Use of Section 66A in Practice**

Multiple studies and Right to Information (RTI) disclosures have shown that Section 66A continues to be invoked in police reports, charge sheets, and even judicial orders years after it was struck down. According to a 2022 compliance report submitted to the Supreme Court by the People's Union for Civil Liberties (PUCL), over 1,000 cases invoking Section 66A were registered *after* the 2015 judgment, with arrests continuing as late as 2021.

This legal necromancy is attributable to:

- Lack of communication between central databases and district-level police forces
- Legacy case management systems in lower courts and law enforcement
- Ambiguity in new statutory replacements for cyber misconduct

The persistence of a “zombie law” reveals not merely bureaucratic inertia but a deeper issue: the fragility of judicial supremacy in regulatory practice, especially when executive agencies retain wide discretionary powers.

### **The Rise of Executive Rule-Making: IT Rules 2021**

In the vacuum left by 66A, the Government of India introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, under the IT Act. These rules empower the executive to:

- Demand content takedown within 36 hours
- Require social media platforms to appoint grievance officers and provide traceability of messages
- Subject digital news outlets and OTT platforms to a three-tier compliance mechanism

While the government frames the IT Rules as tools for ensuring accountability and public order, critics argue that they:

- Lack statutory backing from Parliament
- Blur the line between regulatory oversight and executive censorship

- Create chilling effects through the threat of criminal liability and platform delisting

Several High Courts, including those in Bombay and Madras, have stayed or severely restricted the enforcement of certain provisions, citing violations of constitutional safeguards and procedural fairness.

### **Platform Governance and the Rise of Soft Censorship**

Alongside formal state action, content moderation is increasingly shaped by private platforms' compliance behavior. Social media companies—under pressure to conform to state demands—often pre-emptively remove content, suspend accounts, or adjust visibility metrics. This introduces a layer of informal censorship, where speech is regulated not by law but by opaque terms-of-service algorithms, with limited transparency or recourse for users.

In this regulatory blur, citizens face a fragmented speech regime: judicially protected in principle, but precariously governed in practice. The result is a chilling environment in which dissent is deterred not through statutory punishment but through a complex web of legal uncertainty, bureaucratic discretion, and platform compliance anxiety.

### **5. Reimagining Legal Safeguards for Online Speech in the Indian Context**

The Indian experience with Section 66A, its judicial repeal, and the post-judgment drift into informal and extra-judicial content regulation raise urgent questions about the future of speech governance in a digital democracy. As the lines between state control, private moderation, and civic participation blur, the need for a principled, transparent, and rights-oriented legal framework becomes increasingly vital.

A future-facing speech regime must begin with the constitutional reaffirmation that freedom of expression is the rule, and restriction the exception—an inversion of the logic that has too often governed digital regulation in India. This demands a multi-pronged approach:

First, legislative clarity must replace executive ambiguity. Statutory definitions of “hate speech,” “public order,” and “incitement” must be precise, narrowly tailored, and context-specific, drawing on comparative jurisprudence and sociolinguistic research. Vague categories such as “offensive” or

“annoying” must be retired from all speech-related laws.

Second, any future regulations—be it content takedown rules or traceability mandates—must be grounded in due process and judicial oversight, not administrative discretion. Time-bound judicial review mechanisms, redressal portals, and transparency requirements for takedown orders should be codified by law, not merely platform policy.

Third, platform accountability should not mean coercive compliance. Regulation must ensure that global intermediaries operating in India uphold constitutional protections, including proportionality and non-discrimination, in their content moderation and algorithmic visibility practices. Independent audits and civil society oversight should be institutionalized.

Fourth, capacity-building within law enforcement and judiciary is essential. The continued application of repealed laws like Section 66A reflects not only institutional neglect but epistemic disempowerment. Training modules on constitutional rights, digital speech standards, and evidence-based policing must become integral to India’s justice system.

Finally, and most crucially, legal reform must be animated by a normative vision: that online speech is not a risk to be mitigated but a right to be cultivated. In a deeply plural society, where social conflict often intersects with digital virality, the response to hate speech must go beyond censorship—it must include civic education, counter-speech promotion, and platform design that incentivizes dialogue over division.

The road beyond Section 66A is not just a matter of judicial compliance or legislative drafting. It is a democratic imperative—to ensure that India’s digital spaces reflect not the anxieties of control, but the aspiration of a constitutional republic committed to liberty, dignity, and pluralism.

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