
CLOUDY SOVEREIGNTY: TRANSPARENCY, TAKEDOWN POWERS AND THE CONSTITUTIONAL LIMITS OF SECTION 69A OF THE INFORMATION TECHNOLOGY ACT, 2000

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ABSTRACT

In the digital republic, where speech travels faster than law, the internet has transformed the architecture of democratic participation. Social media platforms, online news portals and messaging applications have become the modern public square, enabling citizens to participate in democratic discourse with unprecedented reach. Alongside this expansion of digital freedom has arisen an equally powerful structure of digital control. At the centre of this structure lies Section 69A of the Information Technology Act, 2000, a provision that gives the executive the power to block public access to online information in the interest of sovereignty, security, and public order. Can a democracy tolerate such a secret structure in the exercise of censorship powers? While the provision has been judicially upheld, its operation remains shrouded in opacity. This essay argues that, although Section 69A may be constitutionally structured in theory, its implementation suffers from transparency deficits and due-process concerns that risk undermining democratic accountability and chilling digital speech.

Key Words: *Transparency, Section 69A, Digital freedom, Information Technology Act, Chilling, Secret, Opacity, and Censorship*

India's Constitutional promise of free speech under Article 19(1)(a) was designed for a country built on democratic accountability¹. In the digital era, this promise applies to online platforms, where speech roams with no boundaries. Against this, the authorities have set up structures to block public access to online content, like Section 69A of the Information Technology Act, 2000². While the provision has been judicially upheld by the Supreme Court in *Shreya Singhal v. Union of India*, the reality of its implementation raises profound Constitutional questions³. While constitutionally upheld, its operation raises a fundamental question: can a democratic state exercise censorship through opaque procedures without undermining constitutional accountability?

THE LEGAL FRAMEWORK OF SECTION 69A

Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject to reasonable restrictions under Article 19(2). Section 69A permits the blocking of information on specified grounds, mirroring Article 19(2): sovereignty, integrity, defence, security of the state, friendly relations with foreign states, public order or prevention of incitement to cognizable offences. The procedural mechanism for exercising this power is outlined in the Information Technology (Procedure and Safeguards for Blocking Access to Information by Public) Rules, 2009.

In *Shreya Singhal v. Union of India*, the Supreme Court struck down section 66A of the IT Act for vagueness but upheld section 69A. The Court's reasoning was based on three key factors: narrowly defined statutory grounds, the requirement of a reasoned order and the availability of judicial review. Section 69A was reviewed as a structured regulatory mechanism with procedural checks. This court validation was premised on the assumption of faithful procedural compliance and meaningful review⁴. However, constitutional validity does not depend solely on textual safeguards; it also depends on how those safeguards function in practice.

¹Constitution of India, 1950.

²Information Technology Act, 2000.

³*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁴Avinash Kotval, "A Jocular Landmine: Navigating the Position of Political Satire in the Sphere of Free Speech and Expression" 7.2 CALJ 58 (2023).

THE TRANSPARENCY DEFICIT

The most concerning feature of Section 69A is not its text but the secrecy it imposes. The confidentiality regime under Rule 16 of the Information Technology (Procedure and Safeguards for Blocking of Access to Information by Public) Rules, 2009, which mandates strict secrecy regarding blocking requests and orders⁵. In practice, blocking orders are rarely published; often, users discover censorship only after their content disappears. While confidentiality may serve legitimate national security interests, its blanket creates opacity.

Firstly, blocking orders are rarely made public, thereby affecting natural justice. This prevents affected users from knowing if their speech has been restricted by intermediaries or the state direction. Secondly, the absence of published reasoning impedes public scrutiny and obstructs judicial review. Courts cannot meaningfully scrutinize whether restrictions meet the constitutional proportionality standard. Frequently, even platforms are restrained from disclosing the precise grounds for blocking⁶. Thirdly, it generates a chilling effect. When citizens cannot predict what speech may be blocked, there is the fear of invisible surveillance. This effect strikes at the core of Article 19(1)(a)⁷.

Transparency is the oxygen of accountability; without it, constitutional remedies are suffocated. In a digital ecosystem, state-imposed opacity compounds uncertainty. The result is not targeted regulation, but ambient restraint.

REFORM OR RECONFIGURATION?

The striking down of section 66A was celebrated as a victory for free speech online. However, the shift from criminal prosecution under 66A to executive blocking under 69A represents a transformation in technique rather than philosophy. Criminalisation was replaced with administrative censorship.

Due process requires fairness in decision-making, including notice and an opportunity to be heard. Although the Blocking Rules provide for a hearing mechanism, in practice, the parties are

⁵Saachi Dhingraa, “The Need to Protect Data and Privacy Laws in India” 2.4 JCLJ 1831 (2022).

⁶Prabhnoor Kaura, “*Navigating Constraints in New Age Media Landscapes*” 4.4 Journal of Corporate Law and Governance 139 (2024).

⁷Sakshi Sawhney, “*The Information Technology (Amendment) Act, 2008: The Provenance of E-Policing*” (2010) 5 NSLR 160.

not always notified before a block. The Court's confidence in procedural safeguards in the Shreya Singhal Case assumed transparency in the issuance of reasoned orders. Yet, post the case, the landscape reflects not a retreat of state power but its transformation⁸.

The court upheld 69A precisely because of its procedural safeguards. However, if those safeguards operate behind closed doors, the distinction between constitutional restriction and executive overreach becomes blurred. A democracy cannot rely solely on internal executive committees to police censorship; constitutional trust requires transparency .

PRIVACY, SURVEILLANCE, AND STRUCTURE OF DIGITAL CONTROL

Section 69A is not alone; it exists alongside interception powers under Sections 69 and 69B, as well as the regulatory landscape, including the Digital Personal Data Protection Act, 2023. Together, these laws shape the state's capacity to monitor and regulate digital information flows. The constitutional right to privacy, recognised in Justice K. Puttuswamy (Retd.) v. Union of India, introduced a rigorous proportionality framework requiring legality, legitimate aim, necessity, and balancing. Although this case addressed informational privacy, its reasoning extends to state control over digital spaces.

The convergence of data regulation, interception powers, and blocking authority creates a structure of digital sovereignty. Does a confidentiality blanket really need to be? Does notifying satisfy procedural fairness? These questions remain under-examined in current jurisprudence⁹.

TOWARDS TRANSPARENCY: A CLEAR FRAMEWORK

The call into question is not to dismantle Section 69A, but to constitutionalise its practice. National security and public order are legitimate constitutional concerns, so we cannot wholly invalidate this. The Author believes that certain reforms can restore blurry to more clarity.

Mandatory publication of blocking orders, including redacted versions, should be required to ensure public scrutiny without compromising security. There should be issuance of a notification and adherence to natural justice; except in urgent scenarios, the affected parties should be given

⁸Sejal Birania, *Passing of IT Rules, 2021 – An Arbitrary Action of the Government*, (2023) 3.2 JCLJ 2242.

⁹Avinash Kotval, "A Jocular Landmine: Navigating the Position of Political Satire in the Sphere of Free Speech and Expression" 7.2 CALJ 58 (2023).

an opportunity to be heard. Oversight of quasi-judicial bodies can reduce the executive's arbitrary discretion. There should be a new proportionality test when such matters conflict with fundamental rights. These suggested reforms may strengthen the legitimacy of the provision.

The concerns surrounding 69A must also be addressed through the recently enacted Telecommunication Act, 2023, which expands state control over communication infrastructure, including powers of interception, suspension, and regulatory oversight. The convergence of content regulation under the Information Technology Act and carriage control under the Telecommunication Act reflects an emerging architecture of digital sovereignty. This overlap intensifies concerns regarding transparency and proportionality, as multiple regulatory regimes collectively shape the boundaries of digital expression.

CONCLUSION

Section 69A occupies a strong hold in India's digital regulatory architecture. While it is held to be constitutionally valid, its operation within the regime creates significant trouble between form and function. The absence of transparency in procedural safeguards risks transforming a narrowly tailored restriction into an opaque instrument of executive control. The digital age is not afraid to question such arbitrariness and demands transparency. Sovereignty must coexist with accountability, and security must be balanced with liberty. If Section 69A is to remain a legitimate regulatory tool, it must evolve with the demands of the age, which are openness, procedural fairness and proportional justification. Only then can India's digital regulatory blurriness be resolved and the country remain secure and free.