

DE JURE NEXUS LAW JOURNAL

Author:

Sahajpreet Kaur

Symbiosis Law School, Pune

2nd Year, BBA LL.B. (Hons.)

FREEDOM OF PRESS RESTRCITION IN JAMMU AND KASHMIR-
VIOLATION OF FUNDAMENTAL RIGHTS

INTRODUCTION

Background

The government of India took a historic decision on the 5th of August, 2019. The state of Jammu and Kashmir which was given special status under Article 370 of the Indian Constitution was taken away. The abrogation of Article 370 redefined its relationship with the Union of India. The state of Jammu and Kashmir was reorganized into two Union territories namely, Jammu and Kashmir and Ladakh¹.

Kashmir valley has always been an area of dispute between India and Pakistan. While internet shutdown is a problem faced by most of the Indians, the natives of Jammu and Kashmir are worst affected by it². After the abrogation of Article 370, there was complete internet shutdown in the area and exists till date³. Even worse, in the Kashmir area, the calling, SMS, and other landline

¹ Kaushik Deka, How Kashmir changed on August 5, India Today, August 6, 2019

² Murali Krishnan, Internet a fundamental right, review suspension: Supreme Court on J&K communication shutdown, August 22, 2019.

³ Justin Sherman, Kashmir Internet Shutdown Continues, Despite Supreme Court Ruling, The Diplomat, August 21, 2020.

services were also suspended. Section 144 of the Code of Criminal Procedure was imposed along with these restrictions which prevented the movement of people⁴.

With all the constraints put, the people of Jammu and Kashmir could not exercise their fundamental right to freedom of speech and expression under Article 19(1)(a). People could not carry on with their business and profession for several days. This severely affected the press media because they were not allowed to express their views at the time of such political upheaval. Even the journalists were unable to contact their editors and were not allowed to move freely to report⁵.

Timeline of Events

In lieu of the situation discussed above, the Executive Editor of Kashmir Times, Anuradha Bhasin filed a writ petition before the Supreme Court under Article 32 of the Indian Constitution in which she pleaded that all the communication services including internet connection be restored as it was against the fundamental rights mentioned under the Indian Constitution (Article 14,19 and 21)⁶.

Following this, Ghulam Nabi Azad filed another petition. It was argued that all the orders under which the restrictions were not made accessible hence, unfair. Despite that only some orders were made public.

It was on 10th January, 2020 that the Supreme Court pronounced the judgment and mentioned that the state government needs to review its orders in line with the proportionality standards. The court also observed the gaps in the Telecom Suspension Rules and issued guidelines for the same to be reviewed. In response, the Government of Jammu and Kashmir eased the internet shutdown. The government issued an order and provided access to only certain whitelisted websites which did not include social media and other private networks. Slowly and eventually ban on social media was lifted but the speed of the internet was a major issue which prevailed⁷.

After the outbreak of the pandemic, the whole nation including Jammu and Kashmir witnessed lockdown but the restrictions on internet still prevailed which forced people to move to the court

⁴ Express Web Desk, Explained: What is Section 144 of CrPC, The Indian Express, August 5, 2019

⁵ A.S. Pannerselvan, Information blackout leads to silence and exaggeration, The Hindu, August 14, 2019

⁶ Anuradha Bhasin & Anr. v. Union of India & Ors., 2020 SCC Online SC 25.

⁷ A.S. Pannerselvan, Information blackout leads to silence and exaggeration, The Hindu, August 14, 2019.

again to seek relaxation on the policies. A writ petition was filed by Foundation for Media Professionals challenging the decision of the government to deny access to the internet during the lockdown without which there is no access to online studying, virtual court hearings and other vital information. The court pronounced its judgment after a month but did not provide any relief for the same⁸.

STATEMENT OF PROBLEM

Jammu and Kashmir which is known to be synonymous to heaven and paradise on Earth is often the place most prone to violence. With army and military personnel on almost every street the natives of the place suffer the most out of the controversy between India and Pakistan.

The research paper aims to understand the prevailing situation in the state of Jammu and Kashmir during and after Article 370, the restrictions on the press and the extent to which the acts are valid under the exceptions of the fundamental rights and other statutes thereof.

Press and Media have been most suppressed in the state. Media is the voice of the people; it is a vehicle for people to express their views. They work to highlight the grievances of the people for effective administration in this regard and are also an important feature of democracy.

In this paper, focus will be on the Fundamental Right under Part III of the Indian Constitution and how the same has been violated in the state by means of internet shutdown and communication blackout for months even during the lockdown. The role of the courts in handling the issues will be discussed by use of relevant case laws.

Emphasis has also been paid on the New Media Policy 2020 and the concerns that are being echoed about the same.

LITERATURE REVIEW

Freedom of Press and the Laws of Sedition: Towards an Amicable Existence by Aditya Kumar Mishra⁹

⁸ Foundation for Media Professionals & Ors. v. U.T. of Jammu & Kashmir & Anr., 2020 SCC Online SC 453.

⁹ Aditya Kumar Mishra, Freedom of Press and the Laws of Sedition: Towards an Amicable Existence

The paper talks about the quintessence of freedom of press in a democratic nation where the citizens are the real representative of the country. Freedom of press restrictions have existed in our country from time immemorial and the same has been discussed with reference to fundamental rights (Article 19(1)(a)- Freedom of speech and expression and Article 21- Right to life) guaranteed under the Constitution of India. The author also went on to discuss fair criticism and pre-independence era sedition laws.

However, the paper fails to talk about the issue in context to the situation prevalent in J&K. It should also be noted that while talking about freedom of press it is also worthy to mention the right to information which is violated when there is censorship of press as in the New Media Policy discussed further in the paper.

Jammu & Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age by Devdutta Mukhopadhyay & Apar Gupta¹⁰

The article deals with the issues faced by the people of Jammu and Kashmir, internet shutdown, communication blackout and the implications because of the imposition of Section 144 of CrPC. It goes on to illuminate the cases of Anuradha Bhasin and Foundation for Media Professionals. The question which is looked into is whether the steps taken by the Indian Government are outside the preview of national security.

While the paper extensively explained the situation in the area it failed to talk in detail about the fundamental rights which are violated by the orders imposed in Kashmir.

The Abrogation of Article 370 and Bifurcation of Jammu and Kashmir - A Bridge too far by Kashish Mahajan¹¹

The paper extensively covers the steps taken by the government to abrogate Article 370 which provided a special status to the state of Jammu and Kashmir, the constitutional validity of the historic move, the legal steps which the government undertook to bifurcate the state into two Union

¹⁰ Devdutta Mukhopadhyay & Apar Gupta, *Jammu & Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age*, 9 INDIAN J. CONST. L. 207 (2020).

¹¹ Kashish Mahajan, *The Abrogation of Article 370 and Bifurcation of Jammu and Kashmir A Bridge Too Far*, 9 INDIAN J. CONST. L. 106 (2020).

Territories. The article also mentions the concept of judicial review and the president's rule in relation to Article 370.

However, the paper does not mention anything about the ground level problems of the people who face the war like situation almost daily. There has been no mention about the press freedom and essence which will be covered in the present research article.

RESEARCH QUESTIONS

1. Whether the internet shutdown in the Jammu and Kashmir valley is legal and in consonance with the fundamental rights?
2. Whether the restrictions put on the press media in Jammu and Kashmir against their fundamental and basic human rights?
3. Have the courts played a vital role in handling/addressing the grievances of the natives?
4. What are the drawbacks and challenges faced by the New Media Policy?
5. What can be the possible recommendations that can be implemented to ameliorate the current scenario?

RESEARCH OBJECTIVES

1. To focus on the brief history of Jammu and Kashmir before the abrogation of Article 370.
2. To study the changes that were brought about after Article 370 was repealed.
3. To analyze the challenges faced by the people of Kashmir before and after Article 370.
4. To research about the initiatives/steps taken by the courts to address the issues faced by the people.
5. To understand the New Media Policy, the arguments against and the author's view on the same.
6. To mull over the current scenario in the valley and recommend implementations that can be made to tackle the situation.

RESEARCH QUESTIONS

In this research paper I have implemented the ‘Doctrinal Research Methodology’ also known as ‘Pure Theoretical Research’.

It involves research executed on a topic/matter of law by way of arranging, ordering and systematizing the existing statutory provisions and case laws. Rational deduction is the main theme of this method. The paper has used Secondary Sources of Research which includes use of online newspaper articles, journals, books and remote legal databases to reach a rational conclusion and giving pragmatic recommendations that can be implemented considering the issue at hand.

BRIEF HISTORY OF JAMMU AND KASHMIR

Instrument of Accession is a legal document which was introduced by the Government of India Act, 1935. It gave power to the rulers of the 565 princely states to make a choice. They had the option to either join India or Pakistan or form a separate nation altogether. Initially, the rulers did not accept the idea of federal nature of the nation, but after World War II most of them decided to be a part of the nation and accepted the Indian Constitution as their own¹².

On 26th October, 1947, Maharaja Hari, the ruler of Jammu and Kashmir also signed the Instrument of Accession and agreed to be a part of Federal India. But he demanded a special status for the state because of the situation in Kashmir at that time. There was war, cease fire going on in the state and the situation was quite abnormal and unusual. In that scenario, Article 370 was incorporated to the Indian Constitution. It states that the provisions of the Indian Constitution will not be applicable to the state of Jammu and Kashmir until the State constituent assembly gives its assent.

Therefore, Article 370 was only a temporary provision but after the dissolution of the constituent assembly in 1957 without removal or amendment of Article 370, it became a permanent provision of the Indian Constitution which gives an autonomous status to the state of Jammu and Kashmir¹³.

¹² Kashish Mahajan, The Abrogation of Article 370 and Bifurcation of Jammu and Kashmir A Bridge Too Far, 9 INDIAN J. CONST. L. 106 (2020).

¹³ INDIA CONST. art. 370

A historic decision was taken by the government on the 5th August 2019. The state of Jammu and Kashmir which was given special status under Article 370 of the Indian Constitution was taken away. The abrogation of Article 370 redefined its relationship with the Union of India. The state of Jammu and Kashmir was reorganized into two Union territories namely, Jammu and Kashmir and Ladakh.

Right before the special status of Jammu and Kashmir was snatched there was complete internet shutdown in the state which prevailed for months. This paper will further discuss in depth analysis about the challenges faced by the people and the Fundamental Rights guaranteed under Part III of the constitution.

FREEDOM OF SPEECH AND EXPRESSION

Fundamental right to Freedom of speech and expression is guaranteed to all Indians under Article 19(1)(a) by the Constitution of India¹⁴. It is not an absolute right which means it is subject to certain reasonable restrictions under Article 19(2) in interest of the state¹⁵.

Over the years the horizon of this right has been expanded by means of decisions by the courts. In Romesh Thaper v. State of Madras the Hon'ble Supreme Court held that freedom of press is a quintessential part of freedom of speech and expression¹⁶.

Further in the case of Secretary, Ministry of Information and Broadcasting, Govt of India and Ors v. Cricket Association of Bengal and Ors the court brought more clarity on the topic and held that the right to circulate and estimate the volume of circulation is also a part of freedom of press. It was also opined that right to communicate includes communication/expression of views/opinions through any form of media¹⁷.

IMPORTANCE OF PRESS

India is a democratic republic. The Constitution of India is the supreme and stands above all. It was in fact constituted by the people of India. We have the right to elect our own government, who

¹⁴ INDIA CONST. art. 19 cl. 1

¹⁵ INDIA CONST. art. 19 cl. 2

¹⁶ AIR 1950 SC 124.

¹⁷ (1995) 2 SCC 161.

according to us will serve the nation the best. In such a society where essential decisions are in the hands of the citizens, it is important that they are well aware and informed at all times.

The media and press are the powerful tools armed with the responsibility to diffuse within the citizens the day to day national and international affairs. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India¹⁸, the significance of press was elucidated by the Hon'ble Supreme Court of India. Justice Venkataramiah opined by mentioning that the press is supposed to be the educator of the public and thus plays an important role in a democracy.

The Supreme Court further in the case of Union of India v. Association for Democratic Reforms¹⁹ expanded the horizon of fundamental rights by stating that imparting information and holding opinion are a part of freedom of speech and expression.

FREEDOM OF PRESS AND INTERNET RESTRICTION IN J&K

Freedom of Press

In Channing Arnold v. The Emperor, which was the first case dealing with freedom of press, the Privy Council stated that, the journalist has the freedom to express his opinion on the subject being dealt by him as widely as the subject may be and not more than that²⁰.

Further in the cases of Bennett Coleman v. Union of India²¹, Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India and Sakal Papers (P) Ltd. v. Union of India²², the court has elucidated on the freedom of press and its essence in modern society.

A number of pleas were filed before the Supreme Court regarding the curbing of essential services in the state after the Government of India took the historic decision of abrogating Article 370. Addressing all the pleas, the court ruled that essential services should be restored by the state. It also ordered the state government to lift the restrictions on the internet because freedom to carry out any business which uses the internet is a fundamental right.

¹⁸ (1988) 4 SCC 592

¹⁹ (2002) 10 SCC 111.

²⁰ 1914 SCC OnLine PC 23.

²¹ AIR 1973 SC 106.

²² AIR 1962 SC 305.

The three judge bench headed by Justice NV Ramana held that freedom of speech and expression as under Article 19(1)(a) and freedom of trade and profession via the internet is protected under Article 19(1)(g). The restrictions applicable should be in consonance with the provisions under Article 19(2) and 19(6). It should also be in balance with the proportionality principle.

With regards to implications under Section 144 of Code of Criminal Procedure and communication blackout in the state, the court said that the restrictions cannot be imposed for an indefinite period of time; that too many orders under Section 144 amounts to abuse of power and that the orders imposing restrictions should be put out in the public so that people can file pleas against it in case of any disagreement.

While the framing of the Constitution, BN Rau mentioned that there is no need to mention the freedom of press expressly/separately as it is impliedly mentioned in other provisions of the Constitution.

Internet Restrictions

Access to the Internet has been declared as a fundamental right which implies that the right cannot be taken away from the citizens except under certain conditions. In Shreya Singhal case, the court upheld the constitutional validity of Section 69A of the Information Technology Act, 2000 read with Information Technology Rules, 2009²³. The section does not imply that complete internet shutdown is valid but it mentions that only restrictions to some websites can be considered. Therefore, it can be mentioned that recourse cannot be taken by the government under this Section. The restrictions are temporary and are to be in relation to the situation of emergency in the state. It is quite evident from the statements of the courts that the orders imposed in the state of Jammu and Kashmir is constitutionally invalid.

NEW MEDIA POLICY

The New Media Policy for Jammu and Kashmir which was introduced in May 2020 has created havoc in the valley. The policy is basically a move to censor the press. According to the new policy, the news article/piece has to be verified by the police before publishing and an FIR will be lodged in case of any news which is considered inconvenient.

²³ IT Act, Sec 69.

The journalists in the area who have been working to promote journalistic values are highly disappointed and many protests are being undertaken to express their disagreement towards the policy.

The government revoked Article 370 in order to make Jammu and Kashmir a part of India and put an end to the system of different constitution system in J&K but introduced a separate media policy for the state which was observed to be ironical, Mr Rahi exclaimed²⁴.

CRITICAL ANALYSIS

Freedom of Press has been the most suppressed in the state of Jammu and Kashmir. In a country like India, where the people have all the rights to express their views freely and more importantly where the citizens are the representatives of the nation, it is very important that they are the ones who are well informed about their surroundings and the day to day happenings around the country.

Press is the medium through which the natives voice their opinions and if that is only censored or curbed, are we even in a democracy is the question that arises and needs to be answered. Reasonable restrictions are provided under the fundamental rights and can be imposed if the matter falls under any of those provisions.

In J&K, the internet shutdown and communication blackout was implemented one night before the decision abrogating Article 370 of the Indian Constitution so that there is no chaos about the same amongst the people. According to me, it was a step which was necessary at that point of time in order to prevent a war like situation and loss of lives due to protests because the special status of Kashmir was snatched which is indeed a historic decision. But there was no sign as to when the connectivity was to be restored. Months passed by and the journalists could not move and report, people could not carry on their businesses and worse, children could not attend schools and colleges. This had a large impact on the life of many students, some could not handle the stress and suicide seemed to be a better option. Even after the lockdown because of the coronavirus pandemic, when every single facility was online, internet in this area was not restored and later when the state government relaxed the policies, only 2G internet was available which is extremely

²⁴ Arpan Chaturvedi, Kashmir Internet Shutdown: Supreme Court Says Freedom Of Speech, Business On Internet A Fundamental Right, January 10, 2020.

slow. All in all, the sufferings were not only in terms of economy but also mental health of these people.

Reportedly, cases were being filed in the Supreme Court to ease the restrictions on the internet to facilitate people to continue with their normal lives. The Supreme Court ordered the state government to relax the policies and make all the orders curbing the services public.

As mentioned and already discussed, Right to Access internet has been declared as a fundamental right by the Supreme Court of India. Right to life under Article 21, Right to freedom of speech and expression under Article 19(1)(a) need to be looked into by the court with regard to the situation in the state and basic rights should be restored.

The New Media Policy 2020 for Kashmir was not accepted by all and was highly criticized because of its provisions which promoted censorship of news. The ironic thing about this policy which was raised by journalists too was that while the government is making attempts to remove the Constitution of J&K so that the whole of India follows a single text, a separate media policy was implemented in the state.

CONCLUSION AND RECOMMENDATIONS

Thus it can be concluded that the press is a crucial part of the society and censoring it means indirectly attacking the public. Right to Information is very pivotal to a democratic nation like India. Therefore, after analyzing the entire situation in the valley, it can be stated that the courts need to look into this matter and provide a solution which is feasible for all and is in consonance with the supreme text that is, the Constitution of India.

The leading case laws of Anuradha Bhasin and Foundation for Media Professionals is discussed in the paper and it can be concluded that the internet restrictions need to reviewed again by the court with immediate implementation of orders without which it is a representation of eroding judicial review in the context of national security which is not justifies in the absence of emergency proclamation. The government along with the court's decision is not valid and inconsistent with the previous decisions and basic human rights and international norms.

It can be assumed a failure on the part of the court to implement the already existing/established principles which resulted in the denial of access to the internet in the state for approximately a

year. The news will have to go through the bureaucrats and the cops before being published in any form which is not in consonance with the laws. Therefore, the new media policy should be reviewed.

People have the right to protest peacefully and that right should not be taken away from them in the name of national security. Restrictions should be eased and problems should be resolved rather than ignored in order to create a healthy surrounding.

Last but not the least; Justice should be the motto of the courts. Justice should not take years to be addressed; rather it should be ready and speedy because Justice delayed means Justice denied.



De Jure Nexus

LAW JOURNAL