

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**ANURADHA BHASIN V. UNION OF INDIA (2020)****Court:** The Supreme Court of India**Citation:** Writ Petition (Civil) No. 1031/2019**Bench** - Honourable J. R. Subhash Reddy, Honourable J. B.R. Gavai and Honourable J. N.V.S Ramana.**Theme-** Internet Shutdown, Public Order, National Security**Subject:** Criminal Law**Judgement-** India**BRIEF FACTS OF THE CASE:**

Jammu and Kashmir is a state in India that has long been a cause of conflict between India and Pakistan. According to "Article 370 of the Indian Constitution," the state had "special status", giving it power to make its own constitution, and the citizens of India from outside the state were not allowed to possess property or land in it. The Indian Constitution was revised on August 5, 2019, removing the special status that the state of Jammu and Kashmir held since its inception in 1954, and to subject the state to the dynamic Constitution of India as well as its contents.

In the time period preceding the order by the legislative assembly, the government of India started restricting the availability of internet communication and travel freedom. The pilgrims visiting the Amarnath Pilgrimage site and other tourists were advised to avoid the Indian state of "Jammu and Kashmir" by the "Civil Secretariat of the Government of Jammu and Kashmir's Home Department" on August 2. As a result, shutting down of schools and businesses was ordered until further advisory. At 4th August 2019, the region's connectivity to the landline, mobile networks and availability of internet were turned down under "Section 144 of the

Criminal Procedure Code." additional restrictions were imposed by The District Magistrates on freedom of movement and public assembly.

The shutdown of internet connections and limiting the mobility were brought up in court as restrictions on "Article 19 of Indian Constitution", the article ensured that the "right to freedom of speech and expression", restricted journalists' ability for travelling as well as publishing were enforced.

ISSUES

1. Can the immunity for having to produce all restriction orders be taken up by the government?
2. Does freedoms relating to speech and expression, practise any profession or carry on any employment, trade, or business on the Internet, fall under Part III of the Constitution's fundamental rights?
3. Is the government's decision to limit internet access acceptable?
4. Were the limitations on movement which were imposed under Criminal Procedure Code's Section 144 were acceptable or not?

CASE COMMENTS/ ANALYSIS

01. The State was required to present the orders establishing the limits, according to the Court. It began by expressing its frustration with the difficulties it experienced in evaluating validity of the limits, when authorities failed the discourse of orders imposing them. Citing and mentioning the instance established in "**Ram Jethmalani v. Union of India**", the hon'ble Supreme Court stated:

"The State had an obligation to disclose information in order to satisfy the right to remedy as established in Article 32 of India's Constitution. Furthermore, Article 19 of India's Constitution had been interpreted to include the right to information as an important part of the right to freedom of speech and expression". Further it said, *"a democracy, which is sworn to transparency and accountability, necessarily mandates the production of orders as it is the right of an individual to know."*

These rights acted as obligation for the state to safeguard them properly and forbade the state from arbitrarily removing these rights. Supreme Court underlined that no law should be approved in a secrecy, despite of having the potential for a democratic backlash. In order to strengthen its opinion, the hon'ble Court also quoted "James Madison", stating:

"a popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both.

Knowledge will forever govern the ignorance and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

It was also cleared that unless there is a compelling cause of public interest for secrecy, the state was mandated to take aggressive efforts to make any law curtailing basic rights of public.

02. *"Freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under Part III of the Constitution"*.

In the same judgement, it was also held that, *"freedom of speech and expression through the internet is one of the integral parts of Article 19(1)(a)"*. this argument was relied upon the ruling in *"Indian Express V. Union of India which declared freedom of print medium is an essential right under Article 19(1)(a)"*. After that in *"Odyssey Communications Pvt. Ltd. V. Lokvidayan Sanghatana*, it was held that *the right of citizens to exhibit films is now protected under Article 19(1)(a). Internet is one of the fundamental means to broadcast information and hence freedom of speech and expression through the internet is a fundamental right under the Article"*.

The government has the power and authority to impose reasonable restriction, albeit they are bound by Article 19(2). This article mentions that reasonable restrictions are imposed on grounds such as "sovereignty, integrity, security, friendly relations with the foreign States; public order; decency or morality; or contempt of Court, defamation or incitement to an offence".

03. Banning of internet access by the government is unconstitutional.

Consideration of both procedural and substantive issues was also necessary for determination of constitutional legitimacy of shutdown relating to internet, held court.

There are two parts to the procedural mechanism. First, contractual relationship between I.S.P.s and government. Then there is a legal aspect also, which is covered by "Information Technology Act of 2000" , "Code of Criminal Procedure, 1973" and "The Telegraph Act".

In 2017, Telegraph Act's section 7 mentioning about the Suspension Rules was approved, allowing the internet to be restricted subject to specific protections. However, "Section 5(2) of the Telegraph Act" was also added to this, which allowed the suspension orders specifically in the situations of a "public emergency or for the public's safety". But, in order to pass such an order, the presence of an emergency must be determined.

The maximum term of a suspension order was not specified in the suspension guidelines. As a result, discretion of Review Committee was taken into consideration to decide upon the term it may last. However, it also provided to ensure that it shall not surpass term which is required.

04. Limits imposed in "Section 144, CrPC" were invalid. The government doesn't have authority to seek immunity from having to produce all orders issued under "Section 144 of the Criminal Procedure Code". In this regard, it was held that:

"The power cannot vanquish legitimate expression of opinion or grievance or exercise of any democratic rights. This section can only be imposed in case of an emergency and not for the prevention of instruction or injury to any lawfully employed. Therefore, mere disturbance in the law and order of the state may not necessarily lead to a breach of public order. Only the magistrate and the state have the right to decide whether there is a likelihood of threat to public peace. No person should be deprived of his liberty unless it is dangerous and therefore repetition of the imposition of such orders would be a clear abuse of power".

State was required to disclose the order imposing limits before the court, according to the court. The state is required to disclose any relevant information that is required. "Freedom of speech and expression encompasses the right to information," according to the interpretation of Article 19. Considering mere fear of harm, the state has no legal authority to enact such a legislation. As a result, there cannot be a legal basis for refusing to present the order.

JUDGEMENT

The hon'ble Supreme Court, in their judgement, mentioned that "the government cannot contend any exception for providing any order before the court which is passed under Section 144 of the CrPC". The hon'ble court also pointed that "the internet to be essential in today's life and thereby freedom of speech and expression and freedom to practice any profession, occupation or trade on the internet is a part of fundamental right under Part III of the Constitution".

Further, hon'ble court also mentioned, "the prohibition for access to the internet will only be valid in certain circumstances only otherwise it'll cease to exist. Such impositions affect the Fundamental Rights of the people, therefore the court ordered to follow the test of Proportionality to satisfy that no kind of violation of natural justice exists".

Limitations which were imposed upon the internet access and citizen's movement was not overturned by hon'ble court, rather it did broaden the understanding of "freedom of speech and expression by including the right to access the internet, which was an essential part of the Article and could only be restricted in cases of national security".

The judgement, by the hon'ble court, didn't provided any immediate and apt relief to those who had been damaged by the orders, **but it did provided guidelines for future suspension orders and how they should be carried out to prevent the government from misusing its power.**

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PRESENT STATUS OF THE JUDGEMENT

Recent Internet Shutdowns

Following the decision in “Anuradha Bhasin v. Union of India” on 10th January 2020, several states have also implemented internet shutdowns, however copies of the legal orders on official government websites or via media reporting for the following instances were not able to be located.

Madhya Pradesh: In preparation of demonstrations against the “Citizenship (Amendment) Act 2019”, mobile internet services in Jabalpur were halted on January 31, 2020. Although the Deputy Inspector General acknowledged to a media source that the District Magistrate had issued an internet suspension order, we were unable to locate a copy of the order itself in the public domain.

Meghalaya: After conflicts over the “Citizenship (Amendment) Act, 2019”, mobile internet connections in six Meghalaya districts were halted for 48 hours on February 28, 2020.

Uttar Pradesh: After conflicts over the “Citizenship (Amendment) Act, 2019”, the District Magistrate in Aligarh halted mobile internet connections for two days on February 27, 2020.

West Bengal: Internet services were expected to be halted in seven West Bengal districts from February 18 to February 27, 2020, to avoid cheating in Class X Madhyamik examinations. In addition, mobile internet connections in Hooghly were halted from 13.05.2020 to 17.05.2020 due to confrontations over mobility in confinement zones.

CONCLUSION

The Internet has evolved into a tool for disseminating critical information or for two-way communication. It has become inextricably linked to people's lives. In a circumstance like today's coronavirus lockdown, when students around the world can access education while staying at home owing to the internet, and individuals all over the world can work and make money, people from all over the world can continue to earn money.

In a circumstance like this, the internet plays a critical function, which has now been elevated to a right under “Part III of the Indian Constitution”, interpreted as the “Right to freedom of expression and expression”.

REFERENCES

[i] Bhasin vs. Union of India, Global Freedom of Expression, Columbia University, <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>

[ii] Rishita Gupta and Varsha Agarwal, Anuradha Bhasin vs. Union of India – Case Analysis, <https://blog.ipleaders.in/anuradha-bhasin-v-union-of-india-case-analysis/#Conclusion>