

THE LEGALITY OF INTERNET SHUTDOWN IN INDIA: ANURADHA BHASIN V. UNION OF INDIA

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I. Introduction

INDIA IS often referred to as the internet shutdown capital of the world.¹ Internet shutdowns are being imposed in the country by administrators on the grounds of defending national security, combating terrorism, and preserving public order or safety. As per the data maintained by the Software Freedom Law Centre, New Delhi, an independent body of experts working towards defending the freedom of cyberspace, since 2012, a total of 694 internet shutdowns have been ordered in India by governmental agencies.² Internet shutdowns have severe socio-political and constitutional implications, as they curtail freedom of speech & expression and access to information. They restrict the ability of citizens to express their views and limit access to news, leading to a lack of transparency and accountability in governance. Social rights groups long fear that internet shutdowns can be used as a tool to suppress dissent against the ruling government in a democracy. Internet shutdowns can also cause social isolation, hinder access to education, and impede emergency services, putting innocent lives and property at risk. Internet shutdowns come at an economic cost, i.e., they disrupt commerce and trade, causing economic losses. As the internet plays a central and pervasive role in society, any restriction imposed upon access to internet services by governmental agencies directly encroaches on the fundamental rights of the citizens enshrined in the Indian Constitution.

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¹ Mehab Qureshi, "Decoding India's dubious distinction as world's internet shutdown capital" *The Indian Express*, Dec. 04, 2021, available at: <https://indianexpress.com/article/technology/tech-news-technology/india-ranks-highest-in-internet-susensions-7654773/> (last visited on Feb. 25, 2023).

² Software Freedom Law Centre, "India's Shutdown Numbers", available at: <https://internetshutdowns.in/> (last visited on Feb. 25, 2023).

The longest-ever internet shutdown imposed in the country was in 2019 in the State of Jammu and Kashmir (hereinafter "J&K"), which lasted for 522 days.³ The President of India passed the Constitution (Application to Jammu and Kashmir) Order, 2019, which removed the special status of the State of J&K. Immediately before the passing of the order, the Home Department of the State of J&K issued an advisory to tourists present in the State to make arrangements for their quick return and ordered to keep offices and educational institutions closed till further orders. On August 4, 2019, orders were passed to discontinue the services of the internet, landline, and mobile phone networks in the valley. Further, on August 5, 2019, using the authority granted by section 144 of the Code of Criminal Procedure (*hereinafter "CrPC"*), the District Magistrates imposed restrictions on movement and public gatherings while apprehending breaches of peace and tranquillity.

As a consequence of the restrictions described above, the petitioner, a journalist by profession, claimed that post restrictions, the print media had come to a grinding halt in the State due to the non-availability of internet services and restrictions on the movement of journalists.

The petitioner approached the Supreme Court under article 32 of the Constitution of India by filing W.P. (C) No. 1031 of 2019,⁴ alleging violation of article 19, particularly the right to freedom of expression. The Supreme Court grouped several writ petitions and intervenor applications filed by different stakeholders on related grounds in addition to the petitioner for common disposal.

II. Summary of the Arguments Advanced by the Petitioner/s

The petitioners argued that restricting access to the internet should be evaluated on the grounds of reasonableness and proportionality as it restricts freedom of speech and expression and the right to carry on trade and commerce. The non-supply of the orders related to the suspension of mobile/internet services and section 144 of CrPC was also challenged before the court. The petitioners further argued that while the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 (*hereinafter "Suspension Rules, 2017"*) provided guidelines for restricting internet services, yet the suspension orders passed by the State were perverse, did not follow the procedure provided under the Suspension Rules, 2017, and suffered from non-application of mind. The aforementioned orders provided no justification the necessity of the restrictions, and were based on an apprehension of danger to 'law and order',

³ *Ibid.*

⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

which is not the same as 'public order', a ground which permits imposition of reasonable restrictions under article 19 (2). It was further argued that the Suspension Rules, 2017 only contemplated temporary suspension of internet services and not a blanket or indefinite ban. The State should have prioritized the least restrictive measures while imposing restrictions in order to maintain a balance between safeguarding public safety and respecting individuals' fundamental rights.

III. Summary of the Arguments Advanced by the Respondent/s

The respondents through Attorney General and Solicitor General argued before the court that the orders related to the suspension of mobile/internet services, and section 144 of CrPC were passed by the State authorities keeping mind the circumstances related to cross border terrorism and internal militancy prevailing in the State. The State's responsibility to ensure security and preserve the lives of its citizens is paramount, and the restrictions are justified by historical necessity. The Solicitor General further asserted that the petitioners' assertions about the facts were inaccurate and overstated the effects of the restrictions. He claimed that there was never any restriction on people's freedom of movement and that newspapers, television stations, and radio stations continued to function in the State. He further argued that the restrictions were necessary in light of provocative speeches and messages circulating in the region, and the government officials on the ground had the authority to decide on the suitable restrictions. He added that the "dark web" made it easier to buy illegal drugs and weapons and that the internet allowed for the dissemination of fake/misleading news and images that could incite violence. Due to the internet's capacity to promote two-way communication and easy dissemination of messages, the Solicitor General contended that free speech criteria for newspapers cannot be applied to the internet.

IV. The Issues Framed along with the Decision and Reasoning of the Supreme Court

The Supreme Court identified five issues/questions of law for consideration after taking into account the assertions made by the petitioners/applicants and responses submitted on behalf of the respondents.⁵ The identified issues/questions of law were examined in four different

⁵ *Id.* at para 10

The following questions of law arose for consideration:

- I. Whether the government can claim exemption from producing all the orders passed Under Section 144, Cr. P.C.?
- II. Whether the freedom of speech and expression and freedom to practice any profession or carry on any occupation, trade, or business over the internet is a part of the fundamental rights under Part III of the Constitution?

sections of the verdict. The following sections summarise the court's decision and reasoning concerning the five issues:

1. Issue No. I: Whether the government can claim exemption from producing all the orders passed under section 144, CrPC?

The petitioners/applicants alleged in their submissions that the orders imposing restrictions, particularly with respect to the suspension of mobile/internet services and section 144 of CrPC proceedings, were not supplied to them. The fact of the non-supply of relevant orders of the authorities to the petitioners was not denied by the respondent-state. The court was of the view that the orders imposing restrictions were to be provided by the respondent-state. For arriving at this conclusion, the court initially relied upon Article 19 of the Indian Constitution, which has been interpreted to imply that the right to information is a crucial component of the freedom of speech and expression. The court also referred to the precedent set by *Ram Jethmalani v. Union of India*⁶ in this regard. Further, the court was of the view that in a democracy, there should be a free flow of information. It is a constitutional mandate and a requirement under the principles of natural justice that no law should be passed covertly.

Thus, relying on the principles of natural justice and the right to information guaranteed by article 19 of the Indian Constitution, the court asserted that whenever curtailment of fundamental rights is alleged as a result of any order made by the State, the State must take the initiative and make sure that the relevant orders are made available to the court unless the State can seek protection from disclosure of the same under some specific legal provisions.

Although the State initially asserted privilege, this argument was later abandoned in the present case. The respondent-state did present some sample orders to the Supreme Court, but not all of them. They said it was difficult to submit the countless orders as they were being withdrawn and modified on a daily basis. The court held a consistent view that this was not a proper justification for refusing the production of orders before itself.

Thus, the court, after referring to the principles of natural justice, constitutional provisions, and judicial precedents, rightly concluded that the State's approach of not supplying the orders related to the suspension of mobile/internet services and section 144 of CrPC proceedings to

- III. Whether the government's action of prohibiting internet access was valid?
- IV. Whether the imposition of restrictions Under Section 144, CrPC was valid?
- V. Whether the freedom of the press of the Petitioner in W.P. (C) No. 1031 of 2019 was violated due to the restrictions?

⁶ (2011) 8 SCC 1.

the petitioners was unjustified and unacceptable. In line with its consistent view, the court reiterated that whenever any order passed by the State results in the curtailment of the fundamental rights of the citizens, such orders must be immediately placed before the court so that the petitioners can take due note of the same.

2. Issue No. II: Whether the 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?

The court highlighted the importance of the medium of the internet as an enabler of freedom of speech and expression, considering its wider accessibility and reach. The court then proceeded on to discuss the plethora of judgments protecting the medium of expression, starting from *Indian Express v. Union of India*⁷, wherein the court had declared that the freedom of print medium is covered under article 19(1)(a). As technology has evolved, so has the law in this regard and the right of citizens to exhibit films on *Doordarshan*⁸ and the protection to the use of airwaves⁹ have been recognised as part and parcel of article 19(1)(a) guarantee. The learned court went on to observe that “..[t]he freedom of speech and expression through the medium of internet is an integral part of article 19(1)(a) and accordingly, any restriction on the same must be in accordance with article 19(2) of the Constitution.”¹⁰

In the context of article 19(1) (g), the court held that the internet has become an essential tool for trade and commerce as it fosters consumerism and availability of choice. The court further observed that, “[T]herefore, the freedom of trade and commerce through the medium of the internet is also constitutionally protected under article 19(1) (g), subject to the restrictions provided under article 19(6).”¹¹

The court went on to declare that “[t]he right to freedom of speech and expression under article 19(1)(a), and the right to carry on any trade or business under article 19(1)(g), using the medium of internet is constitutionally protected.”¹² But, because the petitioners did not specifically request it, the court did not go so far as to declare the right to access the internet as a fundamental right.¹³

⁷ (1985) 1 SCC 641.

⁸ *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana* (1988) 3 SCC 410.

⁹ *Secretary, Ministry of Information & Broadcasting, GOI v. Cricket Association of Bengal* (1995) 2 SCC 161.

¹⁰ *Supra* Note No. 4 at para 26.

¹¹ *Supra* Note No. 4 at para 26.

¹² *Id.* at para 28.

¹³ *Ibid.*

The court then discussed whether the freedom guaranteed under article 19(1)(g) can be restricted and to what extent. In this regard, reference is made to the various grounds mentioned under article 19(6), which provide for the imposition of “reasonable restrictions”. In response to the petitioners' argument that the restrictions under article 19 of the Indian Constitution cannot constitute a complete prohibition, the court cited previous precedents holding that, under the right circumstances, the restriction can entail a complete prohibition.¹⁴ However, the court further emphasized that complete prohibition should not impose an excessive burden on free speech and that the government must justify the imposition of such a prohibition and detail why less restrictive alternatives would not be sufficient. The court did this by citing the test laid down in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*.¹⁵

After referring to the jurisprudence in the U.S. related to the 1st Amendment to the U.S. Constitution, the court came to the conclusion that any speech that calls for impending violence is not protected by the US constitution. Thereafter, in the Indian context, reference was made to the recent pronouncement of the Supreme Court in the case of *Modern Dental College & Research Centre v. State of Madhya Pradesh*¹⁶, wherein the Supreme Court had once again reiterated that since all constitutional rights are connected to one another, No constitutional right can be considered to be absolute, hence it may be permissible to limit some rights in the public interest. When posed with a dilemma as to how to resolve the conflict between the fundamental rights and limitations on those rights, the Supreme Court in this case had opined that, “[T]his tension between the two fundamental aspects - rights on the one hand and its limitation on the other hand - is to be resolved by balancing the two so that they harmoniously coexist with each other.”¹⁷

The court stated that in order to balance various considerations, there is a need to apply the *principle of proportionality*. Reference was made to the decision of the Supreme Court in *K.S. Puttaswamy v. Union of India*¹⁸, wherein it was observed that, “[P]roportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.”¹⁹

¹⁴ See *Madhya Bharat Cotton Association Ltd. v. Union of India*, AIR 1954 SC 634; *Narendra Kumar v. Union of India* (1960) 2 SCR 375 and *Dharam Dutt v. Union of India* (2004) 1 SCC 712.

¹⁵ (2005) 8 SCC 534.

¹⁶ (2016) 7 SCC 353.

¹⁷ *Id.* at para 62.

¹⁸ (2017) 10 SCC 1.

¹⁹ *Id.* at para 310.

After referring to other judgments²⁰ related to the *principle of proportionality*, the apex court summarized the requirements of the said doctrine, which the authorities must follow while passing any order restricting the fundamental rights of citizens:

1. The possible goal of a measure intended at imposing restrictions must be determined.
2. The authorities must ensure that such a goal must be legitimate.
3. The authorities shall consider any alternative mechanisms that could be used to achieve the stated objective before deciding upon a measure.
4. The State may use only the least restrictive measure, and the appropriateness of such a measure depends on its implications for fundamental rights as well as the necessity of such a measure.
5. The measure must be supported by sufficient material and be subject to judicial review.

As a result, the court unambiguously recognized that article 19(1)(a) of the Indian Constitution protects freedom of speech and expression through the *medium of internet*. Similarly, the right to carry trade and commerce through the *internet* is also protected by article 19(1)(g) of the Indian Constitution. However, the court missed the opportunity to declare the right to access the internet as a fundamental right, citing that the petitioners had not specifically sought a declaration. Further, the court clarified that any restrictions imposed on these rights must adhere to grounds laid down in articles 19(2) and 19(6) and meet the proportionality requirement. The principle of proportionality calls for the authorities to ascertain the legal purpose of a measure intended to impose restrictions, evaluate the existence of any alternative mechanism, confirm that the measure is the least restrictive option available, and also ensure that the measure is sufficiently supported by evidence and subject to judicial review. It is submitted that applying the principle of proportionality to any restrictions imposed on access to the internet by the State will act as a sufficient safeguard, and prevent arbitrary or excessive decision-making by the State/authorities while imposing such restrictions.

3. Issue No. 3: Whether the government's action of prohibiting internet access was valid?

After observing the substantive law pertaining to the right to the internet and the reasonable limitations that can be imposed on it within the parameters of article 19(2), the court proceeded to consider the application of the same to the facts of the case.

²⁰ *CPIO v. Subhash Chandra Aggarwal*, MANU/SC/1561/2019

The court noted that the concerns related to both substantive as well as procedural justice gain importance when restrictions are imposed on fundamental freedoms. At the first instance, reference was made to the procedural mechanism contemplated for suspension of telecommunications services. Starting from 2017, the Suspension Rules prescribed under the Telegraph Act of 1885 have been utilized by the States to restrict telecommunications services, which also includes access to the internet. As per Rule 2, suspension orders can only be made by the Secretary, the Ministry of Home Affairs (GOI), or the Secretary, Home Department of the State Government. Only under unavoidable circumstances can the suspension order be passed by an official not below the rank of Joint Commissioner. The order then has to be approved by the competent authority or lapse.²¹

Furthermore, the court referred to section 5(2) of the Telegraph Act of 1885, which clearly mentions that suspension orders can be issued only in a situation of "public emergency" or in the interest of "public safety" and if the competent authority is satisfied that it is necessary or expedient so to do in the interests of "the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offense."²² Further, while passing suspension orders, the competent authority is required to record its reasons in writing. Still, there is no requirement for the publication or notification of the suspension orders. The court, however, was quick to observe in this regard that:²³

..[I]t must be noted that although the Suspension Rules does not provide for publication or notification of the orders, a settled principle of law, and of natural justice, is that an order, particularly one that affects lives, liberty and property of people, must be made available. Any law which demands compliance of the people requires to be notified directly and reliably.

If aggrieved, adherence to the above requirement would ensure that an affected party would be able to challenge the suspension orders before a competent court.

In the context of the telecommunications blackouts, the court observed that "...[a]s complete broad suspension of telecom services, be it the internet or otherwise, is a drastic measure, it

²¹ The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, Rule 2(1), available at: <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf> (last visited on Feb. 25, 2023).

²² *Hukam Chand Shyam Lal v. Union of India* (1976) 2 SCC 128.

²³ *Supra* Note No. 4 at para 96.

must be resorted to by the State only under 'necessary' and 'unavoidable' circumstances.²⁴ Therefore, the State must explore the existence of an alternate and less intrusive remedy." The court also called attention to a flaw in the suspension rules: despite the word "temporary" appearing in the Rules' title, there is no mention of the longest duration for which a suspension order may remain in effect. The court observed that keeping in mind the doctrine of proportionality, an order suspending the telecommunications services indefinitely is impermissible. The court ordered the Review Committee established under Rule 2(5) of the Suspension Rules to perform periodic reviews every seven days to address this gap and ensure that the restrictions continue to be in accordance with section 5(2) of the Telegraph Act of 1885. Considering the constitutional ramifications of the suspension orders, the Review Committee must also determine whether they are still proportionate.

In this part of the judgment, the court reviewed the procedural mechanism prescribed under the Suspension Rules, 2017, for suspending internet services, identified gaps, and provided certain safeguards. The court pointed out that while the rules do not prescribe any requirement for the publication or notification of the suspension orders, considering the settled principles of law and natural justice, any order affecting people's lives, and liberty must be made publicly available. Further, although the Suspension Rules, 2017 intended to provide for the "temporary" suspension of telecommunications services, they were silent on the maximum duration of suspension orders. Therefore, the court directed the Review Committee to conduct a periodic review every seven days to ensure compliance with the requirements of the Telegraph Act of 1885 and the principle of proportionality. It is submitted that by prescribing these safeguards, the court has plugged the procedural loopholes of the Suspension Rules, 2017, and ensured procedural justice.

4. Issue No. 4: Whether the imposition of restrictions under section 144 of CrPC were valid?

The petitioners had vehemently argued that to impose restrictions under section 144 of CrPC, the State had to demonstrate that "there would be an action which will likely create obstruction, annoyance, injury to any person, or will likely cause disturbance of the public" and that orders passed in mere anticipation or apprehension, as was done on Aug. 4, 2019, cannot be upheld legally. In this context, the court referred to the ruling of the Supreme Court in *Babulal Parate*

²⁴ *Id.* at para 99.

v. *State of Bombay*,²⁵ wherein the court has expressly clarified that restrictions under section 144 of CrPC can be imposed even where only an apprehension of danger exists.

The court added that the directives issued under section 144 of CrPC, directly affect fundamental rights and should not be lightly used. In order to facilitate judicial review of the orders made under section 144 of CrPC, it is essential for the authority to disclose all material facts relevant to the type of exigency, the territorial scope, the nature of the restriction, and the duration of the same, necessitating the passing of such orders. It cannot be stated that orders issued mechanically or cryptically, demonstrating a lack of proper application of mind, were issued in compliance with the law. As a consequence, the court directed the respondent State/competent authorities to determine whether any current orders issued under section 144 of CrPC should be continued in light of the guidelines laid by the court's decision.

Thus, while the court conceded that while the restrictions under section 144 of CrPC can be imposed even when there is only an apprehension of danger to public safety, the court emphasized that as such orders have a direct bearing on the fundamental rights of the public, they should reflect proper application of mind by the concerned authorities.

5. Issue No. 5: Whether the freedom of the press of the Petitioner in W.P. (C) No. 1031 of 2019 was violated due to the restrictions?

The petitioner claimed that because of the cumulative effect of the restrictions, including the application of section 144 of CrPC, and the ban on the internet and communication, she has been unable to print her newspaper. The court stated that in these situations, it must be determined if the contested restrictions, given their all-encompassing nature, have restricted individuals in similar situations during the period. However, the petitioner failed to prove that other people—such as journalists—were also restricted in their capacity to publish newspapers in the region. On the other hand, the Solicitor General claimed in court that other newspapers were published at the time in question. In light of these considerations, the court disagreed with the petitioners' claims that the State of J&K's restrictions on communication and movement directly undermined the freedom of the press guaranteed by article 19(1)(a) of the Indian Constitution.

²⁵ AIR 1960 SC 51.

V. Critical Analysis of the Supreme Court's Decision and Concluding Remarks

In the judgment, the court did concede that subject to reasonable restrictions mentioned in article 19 itself, the freedom of speech and expression guaranteed under article 19(1)(a) and the right to carry on any trade or business guaranteed under article 19(1)(g) through the *medium of the internet* is constitutionally protected. However, it fell short of declaring the right to access the internet as a fundamental right, as the petitioners did not specifically seek such declaration.²⁶ In doing so, the court has chosen to ignore the reality that until and unless the right to access the internet as a fundamental right is likewise recognized, guaranteeing the freedom of speech and expression and the right to carry on trade or commerce through the internet is incomplete. It is submitted that the court is still viewing the internet as an enabler of the fundamental freedoms guaranteed under articles 19(1)(a) & 19(1)(g) and not as an independent fundamental right. On the other hand, the international human rights jurisprudence today is rife with discussions that access to the internet should be considered a human right²⁷, as so many other human rights such as freedom of speech and expression, right to education, right to carry on trade or commerce, right to development, etc., were dependent upon the access to the internet.

Further, acknowledging the existence of the right to access the internet only in the narrow context of articles 19(1)(a) & 19(1)(g) is completely ignoring the relevance of the internet as an enabler of the right to education guaranteed under article 21A and numerous other fundamental rights covered within the broad ambit of article 21, such as right to work, right to health services, right to livelihood, etc. In fact, in the case of *Faheema Shirin v. State of Kerala*,²⁸ the Kerala High Court has declared explicitly that “[T]he right to have access to Internet becomes the part of right to education as well as right to privacy under article 21 of the Constitution of India.” Thus, the court missed a golden opportunity of expanding the scope of fundamental rights through judicial interpretation and including the right to access the internet as part and parcel of these rights.

While internet shutdowns can be ordered by the authorities relying upon one of the grounds covered by section 5(2) of the Telegraph Act of 1885 or article 19(2) of the Indian Constitution,

²⁶ *Supra* Note No. 4 at para 28.

²⁷ UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression- Frank La Rue*, UN GAOR, UN Doc A/HRC/17/27, (May 16, 2011), available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf. (last visited on Feb. 25, 2023).

²⁸ AIR (2020) Ker 35.

the authorities usually claim that internet shutdowns are being imposed in the interests of "public order" or "public safety". Therefore, another major criticism of the judgment is that it does not clearly define what constitutes a "public order" or "public safety" concern that would justify an internet shutdown, leaving room for interpretation and potential abuse of power by the authorities. Some recent internet shutdown orders, particularly in the States of Rajasthan²⁹ and West Bengal³⁰, reveal that internet shutdown orders are regularly issued on the pretext of avoiding cheating and paper leaks in various state-level examinations. This trend is particularly worrisome as the imposition of internet shutdowns for conducting examinations is neither a "public order" nor "public safety" concern, violates the principle of proportionality, and reflects an abuse of power by the authorities.

Lastly, the judgment has been criticized for failing to address the specific context of the State of J&K (now UT), where internet shutdowns have been used extensively and frequently. The Software Freedom Law Centre has reported that, since 2012, 418 internet shutdowns³¹ have been ordered in the State of J&K, the highest when compared with any other State/UT of India. Frequent and extensive shutdowns of communication and the internet significantly negatively impact individuals, society, and the economy. In fact, in the case of *Banashree Gogoi v. Union of India*³², the Guwahati High Court denigrated the State government for not restoring mobile internet services when normalcy had returned and ordered immediate restoration of the mobile internet services in the State of Assam. The mobile and broadband internet services were suspended by the State of Assam in December 2019 in order to contain the state-wide protests and an outbreak of violence related to the notification of the controversial Citizenship (Amendment) Act of 2019. Thus, the court in the *Anuradha Bhasin case* failed to provide any guidance on whether internet shutdowns can be ordered frequently by state governments or how to limit the impact of frequent shutdowns on citizens' fundamental rights.

Despite the shortcomings pointed out above, the court has tried to balance the competing interests of protecting fundamental freedoms through the *medium of internet* on the one hand and the interest of national security and public order on the other. In very clear terms, the court

²⁹ Hamza Khan, "Rajasthan shuts Internet as 16 lakh appear for REET 2021", The Indian Express, Sept. 27, 2021, available at: <https://indianexpress.com/article/jobs/rajasthan-shuts-down-internet-as-16-lakh-sit-for-teacher-exam-7536304/> (last visited on Feb. 25, 2023).

³⁰ Home and Hill Affairs Department (West Bengal), "Temp Internet shutdown Order icw TET Examination 2022 on 11th December", (Dec. 10, 2022), available at: <http://home.wb.gov.in/notice/temp-internet-shutdown-order-icw-tet-exam-1670681143.pdf>. (last visited on Feb. 25, 2023).

³¹ *Supra* Note No. 3

³² 2019 SCC OnLine Gau 5584.

has pointed out that while the fundamental freedoms guaranteed under article 19 are not absolute and reasonable restrictions on telecommunications services (including complete prohibition) can be imposed as constitutionally mandated, yet the State, while imposing such restrictions, has to adhere to the principle of proportionality. The principle of proportionality would ensure that the type and extent of the curtailment of the right are not out of proportion to the purpose of the restrictions. Also, the State should use the least restrictive measure available under the circumstances while ordering suspension of telecommunications services. Also, the court has explicitly stated that complete broad-based telecommunications suspension, which is an extreme measure, may only be employed by the State under "necessary" and "unavoidable" circumstances. Further, such restrictions should not be imposed indefinitely and must be supported by legal justifications.

Access to the internet has become a basic necessity today, as it allows people to access essential services and information, participate in educational courses, conduct online business or financial transactions, and communicate with colleagues and family members. Any curtailment on the internet directly impedes citizens' access to these services, and frequent internet shutdowns also result in reduced economic activity. At the same time, frequent internet shutdowns do not align with our developmental aspirations. *The Sustainable Development Goal No. 9* specifically urges states to take steps to increase access of citizens to Information and Communication Technologies (ICTs) and strive to provide universal and affordable access to the internet.³³ Further, the *Digital India Mission*, a flagship mission of the Government of India launched in the year 2015 also aims to make government services available to citizens through internet and also enhance internet connectivity in the rural and urban areas.³⁴ Therefore, impeded or restricted internet access will severely compromise the success of the *Digital India Mission*.

Given the essential character of internet services and also the corresponding necessity to impose internet shutdowns at times, the Supreme Court, in this judgment, has provided guidance to the central and state governments on how to balance national security or public safety concerns with individual rights and freedoms and prevent arbitrary promulgation of

³³ UN General Assembly, *Transforming Our World: The 2030 Agenda For Sustainable Development*, UN GAOR, UN Doc A/RES/70/1 (Oct. 21, 2015), available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_7_0_1_E.pdf (last visited on Feb. 25, 2023).

³⁴ Ministry of Electronics & Information Technology, Government Of India, *Digital India - Introduction*, available at: <https://digitalindia.gov.in/introduction/> (last visited on Feb. 25, 2023).

internet suspension orders. Thereby it has provided a framework for challenging future cases dealing with government-imposed internet shutdowns in India. It is a significant step towards protecting citizens' fundamental rights and promoting a free and open internet in India.