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Case Comment: Digital Rights and Judicial Prudence: *Anuradha Bhasin v Union of India (2020)*

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INTRODUCTION

The constitutionality of the Internet shutdown and movement limitations in *Anuradha Bhasin v Union of India*¹ was contested because they violated citizens' fundamental rights under Constitutional Order 272², which the President issued as the Constitution (Application to Jammu). After the abrogation of Articles 370³ and 35A⁴, the government of India expanded the laws of the Indian Constitution to the whole of Jammu & Kashmir. The District Magistrates used their authority under Section 144⁵ of the Code of Criminal Procedure to impose restrictions on people's freedom of movement and the ability to congregate in public places with more than five people if they believed there had been a breach of law, order, or tranquillity. Due to security reasons, the internet was shut down in J&K, and it takes 213 days to restore it. The issue arose after August 5, 2019, when broadband providers, landline communication, mobile internet, and

¹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

² The Constitution (Application to Jammu and Kashmir) Order 2019

³ Constitution of India 1950, art 370

⁴ Constitution of India 1950, art 35A

⁵ Code of Criminal Procedure 1973, s 144

other forms of communication were blocked for an unknown amount of time, causing a separation from the rest of the country. Jammu and Kashmir were conferred unique status under Article 370⁶, which included the autonomy to enact its constitution and laws. After it was repealed, the Indian government imposed a communication outage and blackout in the area for several months. Access to the internet and cell networks was inherently limited at this time, and journalists were not authorized to travel or broadcast from the field independently.

FACTS OF THE CASE

Anuradha Bhasin, the Executive Editor of Kashmir Times, took the Indian government to the Supreme Court on August 5, 2019. She was concerned about the travel and communication restrictions that were put in place after Article 370⁷ of the Indian Constitution was repealed. Bhasin argued that the media had been completely cut off due to the suspension of internet connectivity and the lack of any relaxation in the local curfew. To prevent any disturbances to public order and peace, the magistrate issued an order under Section 144⁸ of the 1973 Code of Criminal Procedure, which banned public meetings. So, the magistrate got a bit worried that there might be some trouble with public order and tranquillity and decided to issue an order using Section 144⁹ of the 1973 Code of Criminal Procedure to ban public meetings¹⁰. However, this order was challenged in the Delhi High Court because it was believed to be against Article 19¹¹ of the Indian Constitution. The argument was that by not informing journalists about what was happening, their right to freedom of speech and expression as stated in Article 19(1)(a)¹² of the Constitution was violated, and they were unable to cover the events. She also mentioned that any kind of intervention would limit people's ability to work in certain trades or professions because they heavily rely on the Internet. Even if these activities are conducted online, they are

⁶ Constitution of India 1950, art 370

⁷ Constitution of India 1950, art 370

⁸ Code of Criminal Procedure 1973, s 144

⁹ Code of Criminal Procedure 1973, s 144

¹⁰Priyanka Thakur and Shivani Choudhary, 'Competing concerns of public security and individual liberty: A Critique of The Supreme Court Judgement in Anuradha Bhasin v Union of India' (2020) 1 Himachal Pradesh National Law University Law Journal <<https://hpnlulaw.ac.in/PDF/b5afcb89-59fb-471c-ab46-444e83da53d9.pdf>> accessed 21 June 2024

¹¹ Constitution of India 1950, art 19

¹² Constitution of India 1950, art 19(1)(a)

protected by Article 19(1)(g)¹³ of the Indian Constitution, with some reasonable restrictions. The petition emphasizes the need for laws that ensure press freedom is not hindered during times of crisis. Additionally, it calls for the immediate restoration of internet connectivity and the freedom of movement for journalists.

LEGAL ISSUES

- Whether the freedom of Speech and Expression, as well as the Freedom to Engage in any Profession, Trade, or Business, including those Internet-based, are included in the Fundamental Rights under Part III of the Constitution.
- Whether section 144 of the CRPC¹⁴ and the ban on Internet services is Legal.
- Whether the aforementioned limits infringe on the Petitioner's freedom of the press, as well as to examine the criteria used to determine reasonableness.

ARGUMENTS

Petitioner: The petitioners argued that the blanket internet suspension violated Article 19(1)(a)¹⁵ and 19(1)(g)¹⁶ of the Indian Constitution, impacting freedom of speech, expression, and the right to trade and profession. They contended that the suspension orders did not comply with the Telecom Services Rules 2017¹⁷, as they lacked reasons and a specified duration. Ms. Anuradha Bhasin highlighted the suspension's adverse effect on media operations, while Mr. Ghulam Nabi Azad challenged the declaration of public emergency without evidence. Intervenors emphasized the need for temporary, specific restrictions and the publication of orders to ensure compliance with natural justice principles.

Respondent: The respondents contended that internet suspension was necessary to prevent the spread of misinformation and maintain public order. The Magistrate issued the order after assessing the state's situation, aiming to prevent violent protests. Attorney General K.K. Venugopal emphasized the need for preventive measures due to the terrorism background in

¹³ Constitution of India 1950, art 19(1)(g)

¹⁴ Code of Criminal Procedure 1973, s 144

¹⁵ Constitution of India 1950, art 19(1)(a)

¹⁶ Constitution of India 1950, art 19(1)(g)

¹⁷ Telecom Services Rules 2017

Jammu and Kashmir. Solicitor General Tushar Mehta argued that the state's priority is to protect citizens, highlighting the region's history of cross-border terrorism and militancy. He asserted that restrictions were gradually relaxed based on improving conditions and that selective restrictions failed previously. The respondents maintained that internet restrictions were justified for state security and differed from newspaper restrictions due to the internet's potential for two-way communication and misinformation spread.

OBSERVATION OF SUPREME COURT

The Supreme Court of India issued significant remarks about suspending internet services in Jammu and Kashmir in the historic case of *Anuradha Bhasin v Union of India*¹⁸. The Court discerns that the Internet plays a requisite role in contemporary society, especially when it comes to exercising basic rights like the freedom of speech and commerce. It underscores that any limitations must be obligatory, reasonable, and temporary and that the Constitution proscribes the unspecified suspension of Internet services¹⁹. Citing the precedent in *Ram Jethmalani v Union of India*²⁰, the Court explained that the State had an obligation to disclose information to satisfy the right to remedy as established in Article 32 of India's Constitution²¹. The Court was single-minded about that the prescription prohibiting the use of the Internet was not adequately justified and did not meet the correspondence requirement. To perpetuate openness and allow people to contest limitation orders, all of them must be made public. The Court emphasized that rulings about the application of Section 144²² of the CrPC should be grounded in the actual situation and cautioned against its exploitation to stifle free speech. The Court designated that limitations should not violate people's fundamental freedoms even though it did not specifically validate internet access to be a fundamental right. In *Indian Express v Union of India*²³, the Supreme Court ruled that freedom of expression protects the

¹⁸ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

¹⁹ Gayatri Malhotra, 'Supreme Court Of India Issues Notice In Foundation Of Media Professional's Application Seeking Compliance With Anuradha Bhasin Internet Shutdown Guidelines' (*Internet Freedom Foundation*, 11 May 2023) <<https://internetfreedom.in/supreme-court-of-india-issues-notice-in-foundation-of-media-professionals-application-seeking-compliance-with-anuradha-bhasin-internet-shutdown-guidelines/>> accessed 22 June 2024

²⁰ *Ram Jethmalani v Union of India* (2011) 8 SCC 1

²¹ Constitution of India 1950, art 32

²² Code of Criminal Procedure 1973, s 144

²³ *Indian Express v Union of India* (1985) 1 SCC 641

freedom of print medium. Instead, it linked it and other, more expansive constitutional rights. The decision established criteria for future limitations, delegating that each measure be well justified, reviewed regularly, and temporarily imposed. The Court called for less intrusive measures from the government, panning blanket internet bans as being disproportionate in light of the need to balance national security with citizens' rights. In *Sushila Saw Mills v State of Orissa* the Court²⁴, while upholding the validity of the prohibition, observed that the government may impose restrictions on the freedoms guaranteed under Article 19²⁵ in the interest of the general public. In rare cases, the prohibition may extend to complete prohibition. This ruling established an ordinary for resolving national security concerns while conserving the right to free speech and information access.

DECISION

In a historic ruling, the Indian Supreme Court accentuated the need for sincerity and judicial supervision while daunting internet shutdowns and limitations on basic rights. Conferring to the Court's ruling, any order that lastingly suspends internet services is unlawful and needs to be reviewed regularly. To promote accountability and transparency, these suspension orders must be made available to the general public. The Court further ruled those limitations under Section 144²⁶ of the Code of Criminal Procedure (Cr.P.C.) must be buoyed by considerable material facts and cannot be applied arbitrarily or for the foreseeable future. The Court highlighted the notion of proportionality, stating that any restriction on basic rights must be reasonable, essential, and proportionate to the goal being pursued. This decision focuses on the necessity of striking a balance between national security and constitutional rights, while also warranting that executive acts are subject to judicial inspection²⁷.

²⁴ *Ushila Saw Mills v State of Orissa the Court* (1995) 5 SCC 615

²⁵ Constitution of India 1950, art 19

²⁶ Code of Criminal Procedure 1973, s 144

²⁷ Bhavya Arora, 'Anuradha Bhasin v/s Union of India' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-3164-anuradha-bhasin-v-s-union-of-india.html>> accessed 23 June 2024

ANALYSIS

The *Anuradha Bhasin v Union of India*²⁸ case is a seminal decision in Indian jurisprudence, questioning the constitutional legitimacy of communication and movement limitations in Jammu and Kashmir following the cessation of its special status in August 2019. The petition, filed under Article 32²⁹ of the Indian Constitution, speculated the violation of fundamental rights guaranteed by Articles 14³⁰, 19³¹, and 21³². The Supreme Court, led by Justices N.V. Ramana V. Rama Subramanian, recognized the internet's magnitude for free speech and expression under Article 19(1)(a)³³ and the right to practice any profession under Article 19(1)(g)³⁴, showcasing that any restrictions on internet access must be based on the principles of necessity and proportionality. The Court underlined that, while the right to internet access is not absolute, any restrictions must be appropriate and temporary to serve sovereignty, security, public order, decency, or morality. In *Justice K.S. Puttaswamy (Retd.) & Anr. v Union of India*³⁵ (2019) (Aadhar judgment), According to Justice Chandrachud, legislation that restricts basic rights must have a legitimate State objective. The application of Section 144³⁶ must be based on actual hazards or skepticism of danger, similar to emergencies, to prevent obstacles, annoyances, or injuries to authorized activities. In *Madhu Limaye v Sub-Divisional Magistrate, Monghyr*³⁷, The Supreme Court reiterated that power under Section 144³⁸ CrPC must be utilized in urgent situations, with 'the emergency being sudden and the consequences sufficiently grave', it should be handled in a judicial way that can bear judicial scrutiny.

Critically, the Court's approach to judicial deference presented serious problems. By outsourcing the assessment of suspension orders to an executive-led assessment Committee, it may have abdicated its responsibility to vigorously protect fundamental rights. Absent

²⁸*Anuradha Bhasin v Union of India* (2020) 3 SCC 637

²⁹ Constitution of India 1950, art 32

³⁰ Constitution of India 1950, art 14

³¹ Constitution of India 1950, art 19

³² Constitution of India 1950, art 21

³³ Constitution of India 1950, art 19(1)(a)

³⁴ Constitution of India 1950, art 19(1)(g)

³⁵ *Justice K.S. Puttaswamy (Retd.) & Anr v Union of India* (2019) 1 SCC 1

³⁶ Code of Criminal Procedure 1973, s 144

³⁷ *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1971) 2 SCR 711

³⁸ Code of Criminal Procedure 1973, s 144

retrospective analysis, this procedural review failed to evaluate the limits' substantive and procedural appropriateness. The procedural mechanism consists of two components. First, there is a contractual relationship between Internet Service Providers and the government. Second, there is the statutory component, which is codified in Section 69³⁹ of the Information Technology Act of 2000, the Code of Criminal Procedure of 1973⁴⁰, and Section 5⁴¹ of the Telegraph Act. In *Hukam Chand Shyam Lal v Union of India*⁴², the Supreme Court construed Section 5⁴³ of the Telegraph Act. The Court observed that Section 5⁴⁴ does not provide the government the jurisdiction to seize any telegraph. The existence of a public emergency is a prerequisite for exercising the power granted by Section 5⁴⁵. The Court's analysis focused primarily on the latter because it was immediately applicable to the matter at hand. The decision's procedural focus, which omitted a substantive evaluation of the limits' proportionality, deviated from the Court's historic position as a safeguard of constitutional rights, especially in light of escalating state obstructions.

Furthermore, the reasonableness test's application was limited, as it did not fully consider factual implications or alternative alternatives. The State's reasoning for complete internet shutdowns, based on technology limitations, lacked strong factual backing and ignored less invasive, effective counter-terrorism measures. As a result, the judgment's high deference spectrum approach, combined with insufficient scrutiny of executive acts, has ramifications for future decisions on fundamental rights limitations, particularly in national security cases. The case thus stresses the critical necessity for a balanced judicial approach that protects basic rights while accommodating legitimate governmental interests. The *Anuradha Bhasin* decision accentuated the conflict between judicial directions and state compliance. Despite explicit Supreme Court directions, states continued to impose internet shutdowns without public notice, prompting the *Foundation of Media Professionals v Union of India*⁴⁶ lawsuit to seek

³⁹ Information Technology Act 2000, s 69

⁴⁰ Code of Criminal Procedure 1973

⁴¹ Telegraph Act 1885, s 5

⁴² *Hukam Chand Shyam Lal v Union of India* (1976) 1 SCC 630

⁴³ Telegraph Act 1885, s 5

⁴⁴ Telegraph Act 1885, s 5

⁴⁵ Telegraph Act 1885, s 5

⁴⁶ *Foundation of Media Professionals v Union of India* (2020) 3 SCC 637

enforcement through a miscellaneous application. They advocated for the proactive disclosure of shutdown orders, openness through RTI, and clarification that internet suspensions should be governed by the Telecom Rules of 2017⁴⁷, not Section 144⁴⁸ of the CrPC.

However, the Supreme Court highlighted procedural limitations on reopening settled disputes, reflecting its limited enforcement authority. Reflecting on the judiciary's initiative to maintain accountability and transparency In *CPIO v Subhash Chandra Agarwal*⁴⁹, the decision bolstered citizens' access to information, allowing them to hold the judiciary answerable. This fosters an open and responsible court, which is critical to sustaining the rule of law and protecting fundamental liberties. The Telecommunications Bill, 2023⁵⁰, was passed in December 2023, to modernize telecommunications regulations by adding internet services and giving the government broad control over telecom services during emergencies. The bill requires government clearance for telecom operations and allows message interception for security reasons. Despite its intended regulatory modernization, critics point to the Bill's potential for mass surveillance and a lack of procedural safeguards against excessive inquiries. This legislative and judicial interplay highlights the challenge of balancing fundamental rights protection with state security needs, as well as the ongoing struggle to effectively enforce judicial rulings while updating regulatory frameworks.

CONCLUSION

The landmark case of *Anuradha Bhasin v Union of India*⁵¹ highlights the importance of judicial reinforcement of constitutional safeguards in the face of state-imposed communication and mobility limitations. The Supreme Court's decision defines the contours of fundamental rights in the digital age, notably freedom of expression and the right to conduct business. The verdict requires strict adherence to the principles of necessity, proportionality, and temporariness when enforcing internet shutdowns, thereby assuring executive accountability and judicial oversight.

⁴⁷ Telecom Rules 2017

⁴⁸ Code of Criminal Procedure 1973, s 144

⁴⁹ *CPIO v Subhash Chandra Agarwal* (2020) 5 SCC 481

⁵⁰ Telecommunications Bill 2023

⁵¹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

By affirming the internet's critical role in exercising freedoms under Articles 19(1)(a)⁵² and 19(1)(g)⁵³, the Supreme Court's decision reinforced the need for limits to be established in necessity and proportionality, thereby avoiding arbitrary governmental measures. This historic case not only examined the legal basis for Section 144⁵⁴ CrPC orders but also established a precedent for court oversight, requiring that any infringement of rights be subject to rigorous, periodic scrutiny. The decision's attention to transparency and accountability in executive orders reflects a nuanced understanding of democratic principles, reinforcing the judiciary's duty as the sentinel of constitutional guarantees. Moving forward, the jurisprudence established in this case will serve as a bulwark against excessive governmental encroachment, ensuring that national security measures do not overshadow the sanctity of civil liberties and thus strengthening the Rule of Law.

⁵² Constitution of India 1950, art 19(1)(a)

⁵³ Constitution of India 1950, art 19(1)(g)

⁵⁴ Code of Criminal Procedure 1973, s 144