

TERRITORIAL SOVEREIGNTY: MEDIA SHUTDOWN IN KASHMIR V/S

ARTICLE 19 OF ICCPR

MITUL SINGH THAKUR

Abstract

In 2019, the Indian Government led by Narendra Modi revoked article 370 of Indian Constitution which previously provided special status to Jammu and Kashmir. After the revocation, complete media shutdown was imposed by the Indian Government for prohibiting the publication of information about the situation in J&K. The Government curtailed the freedom of speech and expression keeping in mind the secessionist forces actively being aided by Pakistan to create instability in Kashmir imposes the threat to the National Security of India.

Shimla Agreement stated that the resolution of dispute over contested territory of J&K will be done in accordance with UN Charter. But the Removal of the name of J&K from the list of the contested and disputed territories put an end to the dispute. Thus, India gained the territorial sovereignty over the territory of J&K coming under the LOC after this removal. Therefore, India exercising its sovereignty over J&K is legitimate under horizontal structure of modern international law. The United Nations follows the principle that all the members are sovereign and all the members should be equally respected. And it does not require any member to submit its domestic matters to UN for adjudication. Thus, UN cannot intervene in the issue of India imposing complete media shutdown over J&K as a safeguard against the threat to its national security.

*Article 19 of ICCPR provides the fundamental right to freedom of Speech and Expression. The Media Shutdown imposed by Indian Government over the territory of J&K does not violate Article 19 of ICCPR. The order imposing media shutdown: [a] is provided by law; [b] pursues a legitimate aim; and [c] is necessary and proportionate to threat. Hence, the Government order fulfils the requirements of **Three Part Test**.*

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I. SYNOPSIS

A. ABOLISHMENT OF ARTICLE 370 & MEDIA SHUTDOWN IN KASHMIR:

On 5th August 2019, the Indian government cut all telephone lines and web associations in the Muslim-larger part district of Kashmir all of a sudden.¹ This specific shutdown was the result of an expansive choice by the administration—helmed by Prime Minister Narendra Modi—to revoke Article 370, which had conceded self-governance to the fervently challenged area of Kashmir since India and Pakistan picked up autonomy in 1947.

Internet shutdowns in Kashmir are common. Since 2012, the region has been the target of 180 blackouts, according to the Software Freedom Law Centre. The research paper aims at analyzing the act of Indian Government with respect to concept of Territorial Sovereignty in modern international legal order and article 19 of ICCPR.

It is important to understand the concept of territorial sovereignty provides safeguard to India against the contentions raised by the other countries like Pakistan on imposing media shutdown and reorganization of Kashmir. Further, Article 19 of ICCPR and Constitution of India provides for specific conditions under which Government can exercise its power as Sovereign of the territory to curb the fundamental right to freedom of speech and expression.

A.i. Freedom of Speech and Expression v. Media Shutdown

Article 19 of ICCPR and Indian Constitution provides safeguard to the fundamental right of Speech and Expression. Imposing Media Shutdown may result into violation of right to freedom of speech and expression. The Government of India being the sovereign over the territory has the power to curb fundamental right to protect its sovereignty and national security under extraordinary circumstances. Further, the foreign powers are prohibited by the principle of Territorial Sovereignty to intervene in domestic matters of Indian Territory.

Article 19 (3) of ICCPR lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law” [a]; they may be

¹ PTI (2019) '145 days of internet shutdown in Kashmir, no word on service restoration', *The Economic Times*, 27th December.

imposed only on the grounds mentioned under Article 19 (3) (a) & (b) of ICCPR [b]; and they must conform to the strict tests of necessity and proportionality [c].²

Though Article 19 (3) of ICCPR and Article 19 (2) of Constitution of India provides for the circumstances under which due restrictions can be imposed for infringing the fundamental right of freedom of speech and expression. However, it is debatable that whether the restrictions on right can be imposed prior to circumstances mentioned came into existence.

A.ii. Territorial Sovereignty of India over Kashmir

Charter of the United Nations and the Statute of ICJ provides equality of all members is the basis of the organization.³ The UN Charter does not allow the United nations to intervene in the matters essentially related to the domestic jurisdiction of the State but the Principle is shall not apply in case of threat to peace, breach of peace or an act of aggression by the state.⁴ The two pillars of the contemporary international legal order are the principle of sovereignty and the principle of territoriality.⁵ The Concept of State's right of independence over a specific part of the land emerges from the concept of Sovereignty and territoriality.⁶

The Concept of Territorial Sovereignty can be conceived as an ability of a State to act in a manner which will abstain other States from involving in the acts which will affect the State's Territorial Sovereignty over the specified territory.⁷ The Right of Exclusion is an essential requirement for the reason of maintaining the State's efficiency in exercising its sovereignty over the specified territory. The Idea of Territorial Sovereignty in the horizontal structure of modern International order works as a bridge between the State and its territory.

B. LITERATURE REVIEW:

The act of complete Media Shutdown in Kashmir by the Indian Government is very recent and there is a pressing need for analyzing the act of the Government with respect to the concept of territorial sovereignty under the modern international legal order.

² See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

³ Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 2(1).

⁴ Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 39.

⁵ Giovanni Distefano (2009) 'Theories on Territorial Sovereignty: A Reappraisal', Research Gate.

⁶ *Recueil Des Sentences Arbitrales (2006) 'Island of Palmas Case (Netherlands, USA)', (ed. II) Reports of International Arbitral Awards. : NATIONS UNIES - UNITED NATIONS, pp. 829-871.*

⁷ *Supra 4.*

The Article written by Prof. Giovanni Distefano titled 'Theories on Territorial Sovereignty: A Reappraisal'⁸ deals with explaining the concept of territorial sovereignty on the basis of the concepts of sovereignty and territoriality. The Article further explains the four different theories developed by International Doctrine for explain the legal relationship between the State and the Territory with the help of relevant case studies.

The Article written by Donald W. Grieg titled 'Sovereignty, Territory and the International Lawyer's Dilemma'⁹ which analyzes the conflict between the International Law and the Sovereignty with respect to rules of territorial acquisition.

Dr. Christian Marxsen in his article titled 'Territorial Integrity in International Law – Its Concept and Implications for Crimea'¹⁰ analyzed the conflict between Ukraine and Russia with respect to control over territories under international law and territorial protection laws.

C. RESEARCH QUESTIONS:

- Whether the territorial sovereignty of India over the territory of Kashmir after the act of complete Media shutdown is protected by Article 2 (1) & (7) of UN Charter?
- Whether the order of Indian Government to shut down media in Kashmir by exercising the right of territorial sovereignty is valid and in accordance with the horizontal structure of modern international law?
- Whether the Order of Media Shut Down in Kashmir and Doctrine of Prior Restraint is violative Right to Freedom of Speech and Expression under Article 19 of ICCPR?

D. HYPOTHESIS:

The order of Indian Government to Shut down Media in Kashmir by exercising right of territorial sovereignty is valid. The Doctrine of Prior Restraint is unconstitutional and the order to shut down media in Kashmir violates Article 19 of ICCPR.

⁸ Giovanni Distefano (2009) 'Theories on Territorial Sovereignty: A Reappraisal', Research Gate.

⁹ Donald W. Grieg (1998) 'Sovereignty, Territory and the International Lawyer 's Dilemma', Osgoode Hall Law Journal, VI(1).

¹⁰ Christian Marxsen (2015) 'Territorial Integrity in International Law – Its Concept and Implications for Crimea' Heidelberg Journal of International Law, 75.

E. RESEARCH OBJECTIVE:

The Objective of this research paper titled ‘Territorial Sovereignty: Media Shutdown in Kashmir’ is to understand and analyze the nature of the territorial sovereignty of India over the territory of Kashmir with the help of the four theories of Territorial Sovereignty in modern international law and its protection under Article 2 of UN Charter. Another objective of the research paper is to thoroughly analyze the exercise of right of territorial sovereignty by India in shutting down the media completely over the territory of Kashmir. The last objective of the research paper is to test the validity of the complete Media Shutdown order in Kashmir by Indian Government with respect to Article 19 of ICCPR and the established Three Part Test.

F. RESEARCH METHODOLOGY:

The Research Paper is Doctrinal in nature, which essentially includes the reading of books, article, relevant cases and the Arbitral Awards of the International Court of Justice. The Methodology also includes the reading of the relevant case laws of Indian Courts and European Courts of Human Rights associated with the fundamental right to freedom of Speech and Expression.

After the detailed reading of the abovementioned sources, essential data, study piece and research work is identified for the formation of distinct research questions of the research project. After the formation of the distinct research questions, the researcher analyzed several other research articles and investigated several case laws. Conclusions were drawn on the basis of study conducted and arbitral awards given by ICJ in similar situations where the issue of territorial sovereignty was raised.

The References, Books, Articles and the record of Arbitral awards used in writing this research paper was provided by the TPS Chawla Library, National Law University Delhi and other online sources which contain the relevant case laws and the research articles.

G. CHAPTERIZATION

The Research Paper is mainly divided into five parts. The *first* part is Synopsis. The *second* part is the General Introduction to the Media Shutdown in Kashmir and to the concept of Territorial

Sovereignty. The *third* part of the research paper analyzes the nature of Territorial Sovereignty of India over the territory of Kashmir with respect to Article 2 of UN Charter.

The *fourth* part of the research paper deals with analyzing the validity of India's action of Shutting down Media in Kashmir by exercising its right of territorial sovereignty. The *fifth* part of the research paper aims at testing the validity of order of Government shutting down media completely with respect to Article 19 of ICCPR with the help of Three Part Test. The Three Part test established by various ICJ and ECHR decision analyzes whether the restriction imposed by Government is i) Provided by Law; ii) Pursues a legitimate aim; and iii) Necessary and Proportionate to threat.

The *sixth* part aims at analyzing the validity of Doctrine of Prior Restraint. And the last, seventh part of research papers if the conclusion and recommendations made by researcher.

II. INTRODUCTION TO MEDIA SHUTDOWN IN KASHMIR

The BJP Government led by Narendra Modi revoked the special status of Jammu Kashmir after Article 370 of the Constitution was struck down by the Parliament. After the revocation of the special status of Jammu and Kashmir, all the mobile network facilities and broadband services stopped working from 5th August 2019. The revocation of the special status also resulted into the split of the State of Jammu and Kashmir into two territories (Jammu & Kashmir and Ladakh) under the direct control of Delhi.

Curfews were imposed in the region of Jammu and Kashmir after the revocation of the special status followed by sending thousands of troops. All Internet and Mobile networks were shut down in the region. The Complete Shutdown on Internet services and mobile networks in Kashmir severely hampered the Media's right of publishing the news associated with the situation in Jammu and Kashmir. The Media along with 7 million people in the Jammu and Kashmir lived without internet and phone services for more than 150 days.¹¹

One Journalist named Anuradha Basin filed a petition in Supreme Court for the restoration of the internet and mobile services but the orders given by the court were not implemented

¹¹ Hannah Ellis- Petersen (2020) 'Hospitals, banks and travel companies to get broadband after five-month shutdown', *The Guardian*, [Online]. Available at: <https://www.theguardian.com/world/2020/jan/15/internet-partially-restored-kashmir-social-media-ban-stays> (Accessed: June 20, 2020).

completely.¹² The Internet and Mobile network shutdown in the region of Kashmir resulted into media censorship and prior restraint from publishing information about situation.

Prior restraint and censorship on media may result into the violation of fundamental right to freedom of speech and expression provided under Constitution of India¹³ and ICCPR¹⁴. Restrictions right to freedom of Speech and Expression can be imposed only on the grounds of *national security, public order, public health and public relations with the foreign state*.¹⁵

Article 19 (3) of ICCPR says that restrictions can be imposed only subject to these conditions: the restrictions must be “provided by law” [a]; they may be imposed only on the grounds mentioned under Article 19 (3) (a) & (b) of ICCPR [b]; and they must conform to the strict tests of necessity and proportionality [c].¹⁶

III. TERRITORIAL SOVEREIGNTY OF INDIA UNDER UN CHARTER

Charter of the United Nations and the Statute of ICJ provides that the Organization is based on the principle of the sovereign equality of all its members.¹⁷ The Security Council shall decide and recommend the steps to be taken against any threat of breach of peace or breach of peace itself.¹⁸ The UN Charter does not allow the United Nations to intervene in the matters essentially related to the domestic jurisdiction of the State. But this principle shall not apply in case of threat to peace, breach of peace or an act of aggression by the state.¹⁹

A. HISTORICAL BACKGROUND

After India and Pakistan got independence in the year 1947, Kashmir was free to decide on its own to accede to India or Pakistan according to the provisions of Indian Independence Act 1947. Later Kashmir decided to accede in India and its accession to India became the reason for dispute between the two countries which further resulted into a war in 1948 between both the

¹² *id.*

¹³ *The Constitution of India 1950, article 19.*

¹⁴ *International Covenant on Civil and Political Rights 1966, article 19.*

¹⁵ *The Constitution of India 1950, Article 19; International Covenant in Civil and Political Rights, Article 19.*

¹⁶ *See communication No. 1022/2001, Velichkin v. Belarus, Views adopted on 20 October 2005.*

¹⁷ *Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 2(1).*

¹⁸ *Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 39.*

¹⁹ *Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 2(7); Charter of the United Nations and the Statute of the International Court of Justice 1945, Article 39..*

countries.²⁰ Resolution 39 of January 1948 was adopted by the Security Council for establishment of United Nations Commission for India and Pakistan (UNCIP) aimed at mediating and investigating the dispute. Resolution 47 further enlarged the UNCIP membership and recommended the use of observers for stopping the fight.

In 1949, India and Pakistan signed Karachi Agreement for establishing ceasefire line to be observed by International Observers. These Observers formed UNMOGIP. In 1951, UNMOGIP continued to observe the ceasefire after the termination of UNCIP by its Resolution 91 of 1951. Later in 1965, the relations between the countries were again strained because of the dispute associated with the southern International Boundary.

The Military Hostilities between the countries and the violation of ceasefire line in Kashmir collapsed the ceasefire agreement of 1949. In February 1966, the successful and scheduled withdrawal of the troops by India and Pakistan on 25th February was reported by the Secretary-General. The provisions for withdrawal in the resolution were fulfilled and UNIPOM was terminated in March of 1966. The Ceasefire Line is the Line of Control.²¹

B. SHIMLA AGREEMENT

The Shimla Agreement was a Peace Treaty signed between Indira Gandhi and Zulfikar Ali Bhutto (Pakistani President) on July 2, 1972.²² The Shimla Agreement on bilateral relations between Pakistan and India states that the dispute over the territory of Kashmir will be resolved and settled with peace according to the provisions of UN Charter.²³ The United Nations had institutional presence for a very long time in the contested territory of Jammu and Kashmir which is the region claimed by both India and Pakistan in its entirety. The Shimla Agreement upheld the status of territory of Jammu & Kashmir as disputed territory.²⁴

WORDS SPEAK

²⁰ Department of Peacekeeping Operations, United Nations (2003) *India - Pakistan Background UNIPOM*.

²¹ *UN Resolutions, Kashmir - The History*, Available at: <https://pakun.org/kashmir/history.php> (Accessed: June 19, 2020).

²² Ministry of External Affairs (July 24, 2012) *Shimla Agreement July 2, 1972*, Available at: <https://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972> (Accessed: June 19, 2020).

²³ *Peace and Security* (2019) 'UN Security Council discusses Kashmir, China urges India and Pakistan to ease tensions', *UN News*, 16 August.

²⁴ *Supra* 21.

The name of territory of Jammu and Kashmir was removed from the list of disputed territories by United Nations.²⁵ The Removal of the name of territory of Jammu and Kashmir from the list of disputed territories by UN resulted into the filing of protest petition by Pakistan.²⁶ Further, Pakistan started asking the world for help and for intervening in the issue.

C. REMOVAL OF J&K FROM LIST OF CONTESTED TERRITORIES

Shimla Agreement stated that the resolution of dispute over contested territory of J&K will be done in accordance with UN Charter. But the Removal of the name of J&K from the list of the contested and disputed territories put an end to the dispute. Further, India gained the territorial sovereignty over the territory of J&K coming under the LOC after this removal.

UN follows the principle of Sovereign Equality of all its members.²⁷ After India got the sovereignty over the territory of Jammu and Kashmir coming under the LoC, UN became unauthorized to intervene in the matters specifically associated with the domestic jurisdiction of India in Kashmir. The UN Charter does not require a Country to submit any domestic matter for settlement to UN.

Amending Article 370 of the Constitution and imposition of media shutdown on Kashmir for preventing danger to National Security and Public Order are domestic matters of India and UN Charter prevents United Nations from intervening into this matter. Thus, the imposition of Media Shutdown in Kashmir by Indian Government is valid under the UN Charter.

IV. TERRITORIAL INTEGRITY IN HORIZONTAL STRUCTURE OF MODERN INTERNATIONAL LAW

The notion of Independence of a State over a specified piece of land emerges from the concept of Sovereignty which is one of the two main pillars of contemporary International Order. The Two main pillars are principles of Territoriality and Sovereignty. These two concepts emerged from the horizontal structure of Modern International Law. Every State has the right to exercise its

²⁵ PTI (2010) 'Jammu and Kashmir removed from list of disputes under UN', *The Economic Times*, 15 November; United Nations (2010) 'Jammu and Kashmir out of U.N. list of disputes', *The Hindu*, 15 November.

²⁶ *id.*

²⁷ *Charter of the United Nations and the Statute of the International Court of Justice 1945*, Article 2(1).

discretion and power over a specified portion of Globe which emerges from the concept of Territorial Sovereignty.²⁸

This subjective right of a State to exercise power of a specified part of Globe prevents the other states or institutions from interfering in the matters domestically associated with that part of Globe. Other states also abstain themselves from interfering in domestic matters of any particular state. The Principle of Territorial Sovereignty is a linkage between and State and its Territory in horizontal structure of Modern International Law.²⁹ This principle ensures the efficient functioning of State in its territory by exercising its sovereignty.

The following four theories developed by the International doctrine aims at explain the relationship between the State and its territory in horizontal structure of International Law:

A. *EIGENTUMSTHEORIE* (THE THEORY OF TERRITORY-OBJECT)

The Territory- Object theory aims at comparing the relationship between a State & its Territory with an Individual & subject of a National Legal System. International Law presumes territorial sovereignty as a principle which provides a State power to dispose of its discretion which is same as that of Municipal Legal Order Disposing Goods. Both these judicial relationships have so many similarities between them.³⁰ The Theory also aims at explaining the judicial nature of the actions pursued by a State over its territory.

There are two critics of this theory. *Firstly*, this theory cannot explain the situation where there are multiple properties on the same territory which means of State as well as Individual. The Supporters of this theory tried answering this question by raising the explanation that even if multiple properties are on same territory, there are different levels. *Secondly*, the scope of a relationship between a State and its Territory is not limited to property only.

B. *EIGENSCHAFTSTHEORIE* (THE THEORY OF TERRITORY- SUBJECT)

The theory explains that under International Law, the territory of another state is one of the elements together with population and government of the State.³¹ This theory focussed on

²⁸ G. Scelle, 'Obsession du territoire. Essai d'études réaliste de droit international', in *Symbolae Verzijl, The Hague, Nijhoff, 1958, at 137-361.*

²⁹ *Supra* 6.

³⁰ G. Sperduti, 'Sovranità territoriale, atti di giurisprudenza ed effettività in diritto internazionale', *Riv. Dir. Intern. 1959, 491-425 at 401, 417.*

³¹ *In Re Dutchy of Seeland, Administrative Tribunal of Cologne (RFG), 3 May 1978, in 80 ILR, at 685.*

‘essence’ rather than the ‘possession’.³² The theory faced problems in developing around the European Countries.³³ This theory originates from public law.

The drawback of this theory is its inability to explain immanency of State even when changes occur in the territory of such State. In reality, the personality of a State should change with a change in one of its constitutive elements. The other drawback of the theory is that it only takes into account the territorial dimension of a State and not any dimension which is its sovereign power over its citizens living outside the state. Similarly, Colonial Territories because it cannot be included under this theory cannot be considered as state’s own territory.

C. THE KOMPETENZTHEORIE

According to this theory, the territory of a state is composed of two jurisdictions mainly, which includes the *ratione loci* (Territorial Jurisdiction) and the *ratione personae* (Personal Jurisdiction) in the Sovereignty of the State.³⁴ The UN Charter and the earlier, Charter of the League of Nations generally refer concept of Territorial Sovereignty in terms of the jurisdiction of the State.³⁵

This theory improved the Territory-Subject theory and purified the concept of Territory. The removal of the confusions associated with the theories explaining the relationship between a State and a Territory is a contribution of this theory.

D. THE DOMINANT THEORY

The theories discussed till now only dealt with the limited dimensions of such relationship and therefore have some drawbacks. Under the horizontal structure of modern international law, the sovereignty of a state can be expressed as exclusive power of government to exercise power over territorial community as well as exercise of the real right over the territory. Therefore, territory is object of both real and personal powers.³⁶

³² K. Friker, *Vom Staatsgebiet*, Tubinga, Verlag der H. Laupp’schen Buchhandlung 1857, *passim*

³³ T. Perassi, ‘Paese, territorio e signoria nella dottrina dello Stato’, in *Riv. Dir. Pubbl.*, 1992, 146-160, at 146 ff.

³⁴ E. Suy, ‘Réflexions, sur la distinction entre la souveraineté et la compétence territoriale’, in *Internationale Festschrift für Alfred Verdross*, München-Salzburg, W. Fink, 1971, 493-508, at 495.

³⁵ *The Charter of League of Nations*, Article 15 (9); *The UN Charter*, Article 2(7).

³⁶ J. Combacau, S. Sur, *Droit international public*, 5th Edition, Paris, Montchrestien, 2001, at 398-400.

The real right of a state under international law is to possess its territory which is similar to an individual holding a property under Property Law at National level. The theory firstly discusses the territorial situations which are concerned with separation of sovereignty and its exercise. Secondly, it proposes that territorial jurisdiction does not only mean state exercising its sovereignty over a specified piece of land but it means state exercising sovereignty with specified space with regard to people living in territory. Therefore, the space within which state exercises its sovereignty is the sphere where the jurisdiction of state is valid.³⁷

E. TERRITORIAL SOVEREIGNTY OF INDIA OVER KASHMIR

Jammu & Kashmir being the territory of India grants Indian Government, exclusive jurisdiction to exercise power over the territory of J&K and over the territorial community as well. The Shimla Agreement declared that the area of falling under the LOC will be considered as Indian Territory of J&K. Therefore, India exercising its sovereignty over J&K is valid under horizontal structure of modern international law.

V. MEDIA SHUTDOWN & ARTICLE 19 OF ICCPR

India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10th April 1979.³⁸ Interpretation of ICCPR shall be made in accordance with the ordinary meaning given to the terms of treaty in their context and in regard of the purpose and object of the treaty.³⁹ Article 19 of ICCPR provides the fundamental right to freedom of Speech and Expression. It means, every person has the right to hold an opinion and express thoughts freely without unreasonable restrictions.

The freedom of speech and expression is a fundamental and universal human right essential for discussion and deliberation on matters of public concern.⁴⁰ The Freedom of Speech and

³⁷ R. Quadri, 'Le navi private nel diritto internazionale', 1939, in *Scritti Giuridici, Vol. 1, Milan, Giuffrè 1988*, 39-188 at 72; J. Combacau, S. Sur, *supra* note 18, at 396.

³⁸ United Nations, UN Treaty Database, Available at: <https://tbinet.ohchr.org/layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN>

³⁹ Vienna Convention on the Law of Treaties 1969, Article 31.

⁴⁰ International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171; European Convention on Human Rights art. 10, Nov. 4, 1950, 213 U.N.T.S. 221; Jan Oster, *European and International Media Law* 39, 40 (Cambridge University Press ed. 2016); *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*, AIR 1995 SC 2438 (India); *Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236 (India).

Expression of an individual can be curtailed only on the ground of *National Security, Public Order and Public Health or Morals*.⁴¹

This chapter analyzes the order of Indian Government to shut down media in Jammu & Kashmir from the perspective of “**Three Part Test**”. According to this test, restrictions under article 19 (3) of ICCPR can be imposed subject to these conditions that: [a] the restrictions must be “provided by law”; [b] they may be imposed only on the grounds mentioned under Article 19 (3) (a) & (b) of ICCPR; [c] and they must conform to the strict tests of necessity and proportionality.⁴²

A. MEDIA SHUTDOWN MUST BE PROVIDED BY LAW

The right to freedom of speech and expression is subject to certain restrictions which must be provided by law.⁴³ Order of the Government which restricts people and the media from receiving the information should be clear and specific and should not be overbroad and vague.⁴⁴ The Order of the Government must provide reasonable opportunity to the people to know what is specifically prohibited by the Order and then act according to the Order.⁴⁵

The Laws restricting the right to freedom of speech and expression must be forcible, certain and precise in nature.⁴⁶ The law must provide essential safeguards preventing the misuse of law.⁴⁷ In India, Section 144 of CrPC and Section 3 of Newspaper (Incitement to Offences) Act 1908 provide the provisions for the prevention of the danger and incitement to any offence which can be apprehended. Section 144 of the CrPC provides that the order of restraintment of Media passed under section 144 should not exceed two months time period.⁴⁸ Thus, the Order of restraintment on publication of news about situation in J&K was provided by law.

⁴¹ Constitution of India 1950, article 19 (2); ICCPR 1966, article 19 (3).

⁴² See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

⁴³ ICCPR Article 19, Dec. 16, 1966, 999 U.N.T.S. 171; *Freedoms of opinion and expression*, H.R.C General Comment No.34, U.N. Doc. CCPR/C/GC/34, ¶ 24 (September 12, 2011).

⁴⁴ *Gillberg v. Sweden*, App. No. 41723/06 Eur. Ct. H. R. (2012); *Leander v. Sweden*, App. No. 9248/81 Eur. Ct. H. R. (1987); *Gaskin v. The United Kingdom*, App. No. 10454/83 Eur. Ct. H. R. (1989).

⁴⁵ *Grayned v. Rockford*, 408 U.S. 104 (1972) (India); *Kartar Singh v. State of Punjab*, 1962 SCR (2) 395 (India).

⁴⁶ *The Sunday Times v. The United Kingdom*, App. No. 6538/74 Eur. Ct. H. R. ¶ 49 (1979).

⁴⁷ *Amann v. Switzerland*, App. No. 27798/95 Eur. Ct. H. R. ¶ (2000); *Kopp v. Switzerland*, App. No. 23224/94 Eur. Ct. H. R. (1998); *Kruslin v. France*, App. No. 11801/85 Eur. Ct. H. R. (1990); *Harichand v. Mizo District Council*, AIR 1967 SC 829 (India); *Himmatlal v. Police Commissioner*, AIR 1975 SC 87 (India); *Express Newspapers v. Union of India*, AIR 1958 SC 578 (India).

⁴⁸ *The Code of Criminal procedure (Act. No. 2/1974) (India)*,

In case of *Anuradha Bhasin v. Union Of India*,⁴⁹ the Supreme Court held that the suspension of internet services indefinitely is illegal under law and the orders must satisfy the test of proportionality and reasonableness. The Court did not lift the internet restriction from J&K but directed the government to review the orders of shutdown so as to protect freedom of speech and expression from any unreasonable restriction.

B. Media Shutdown must Pursue a Legitimate Aim

The Legislation prescribing the restraint on publication of news and restricting the right to freedom of speech and expression must pursue a legitimate aim.⁵⁰ *Public Order*⁵¹ and *National Security*⁵² are two interests which can be considered as legitimate grounds for restricting the freedom of Speech and Expression.

The danger because of which the freedom of speech and expression is curtailed must be clear and should not be remote.⁵³ The legitimate ground of National Security for restricting the freedom of speech and expression can be invoked only if the purpose of the legislation is to protect the territorial integrity against the threat or use of force.⁵⁴

The ground of National Security can also be invoked in case the Political Independence of the state is also at risk.⁵⁵ The Government of India invoked the ground of National Security for restricting the freedom of speech and expression as there was a reasonable apprehension of danger on territorial integrity of India over Kashmir.

After India and Pakistan got independence in 1947, according to the provisions of Indian Independence Act 1947, Kashmir was free to accede to Pakistan or India on its own choice. The

⁴⁹ *Anuradha Bhasin v. Union of India*, WRIT PETITION (CIVIL) NO. 1164 OF 2019.

⁵⁰ Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Material and Commentary* 524 (OUP 2nd ed, 2005); *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. No. E/CN.4/1984/4 (1984).

⁵¹ *Womah Mukong v. Cameroon*, Comm. No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991, (1994); *Peoples Union for Civil Liberties v. Union of India*, AIR 2004 SC 1442 (India).

⁵² *The Constitution of India*, Article 19 (2); *Universal Declaration of Human Rights*, G.A. Res 217(III) A, U.N. Doc. A/RES/217(III), art.29 (Dec. 10, 1948).

⁵³ *Whitney v. California*, 274 U.S. 357 (1927); *Scheuk v. United States*, 249 U.S. 47 (1919).

⁵⁴ *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, UN Doc. No. E/CN.4/1996/39 (1996).

⁵⁵ *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. No. E/CN.4/1984/4 (1984).

war broke out in the later year between India and Pakistan after the Kashmir acceded with India which became the matter of dispute between the countries.

In July 1949, India and Pakistan signed the Karachi Agreement which established a Ceasefire line which will be supervised by the military observers. Later also, war broke out between India and Pakistan in year 1965 and in subsequent years with small violations of ceasefire continuing till date.

Thus, the restrictions imposed by Indian Government by invoking the ground of National Security and Public Order pursued a legitimate aim of securing Territorial Integrity of India over Kashmir region. The Indian Government also kept in mind the secessionist forces actively being aided by the Pakistan to create instability in Kashmir also increases the threat to the National Security of India.

C. MEDIA SHUTDOWN MUST BE NECESSARY AND PROPORTIONATE TO THREAT

The only restrictions which serve a pressing social need in a democratic society can be considered as necessary.⁵⁶ The restriction must also be proportionate to the aim which is to be pursued.⁵⁷

Immediate and direct connection between the threat and the expression is necessary.⁵⁸ The method used for restricting the freedom of speech and expression should be the least instructive method.⁵⁹ It is the duty of the Government to demonstrate the proportionality, necessity and the direct connection between the threat and the restriction.⁶⁰

⁵⁶ *Thorgeirson v. Iceland*, App. No. 13778/88 Eur. Ct. H. R. (1992); *Autronic AG v. Switzerland*, App. No. 12726/87 Eur. Ct. H. R. (1990); *Lingens v. Austria*, App. No. 9815/82 Eur. Ct. H. R. (1986); *Barthold v. Germany*, Eur. Ct. H. R. (1985); *Rafael Marques de Morais v. Angola*, Comm. No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005); *Herrera-Ulloa v. Costa Rica*, Case no 12367 IACtHR, (2004).

⁵⁷ *Siracusa Principles*, supra note 19; *Handyside v. The United Kingdom*, App. No. 5493/72 Eur. Ct. H. R. (1976); *Goodwin v. United Kingdom*, App. No. 17488/90 Eur. Ct. H. R. (1996); *Om Kumar v. Union of India*, AIR 2000 SC 3689 (India); *Teri Oats Estate Private Ltd v. U T Chandigarh*, 2004 2 SCC 130 (India); *M P Gangadharan v. State of Kerala*, AIR 2006 SC 2360 (India); *S Rangarajan v. P Jagjivan Ram*, (1989) 2 SCC 574 (India); *Superintendent v. Ram Manohar*, AIR 1960 SC 633 (India).

⁵⁸ *Hak-Chul Shin v Republic of Korea*, Comm. No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (2000).

⁵⁹ *Pathunma v. State of Kerala* AIR 1978 SC 771 (India); *Landinelli Silva v. Uruguay*, Comm. No. 34/1978, UN Doc CCPR/C/OP/1/34/1978 (1984); *Civil Liberties Organisation v. Nigeria*, Comm. No. 151/93 ACHPR (1995); *Fredrick Scheauer, Fear, Risk and the First Amendment: Unravelling the Chilling Effect*, 58 College of Williams & Mary School Faculty Publication 685 (1978).

⁶⁰ *K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India); *CPIO v Subhash Chandra Aggarwal*, (2019) SCC OnLine SC 1459 (India).

Thus, there was a pressing social need to prevent the clear and present danger of threat to Public Order and National Integrity of India by imposing restrictions no lesser than the Prior Restraint applied by the Indian Government.

D. MEDIA SHUTDOWN DOES NOT VIOLATE ARTICLE 19

The Media Shutdown imposed by Indian Government over the territory of J&K does not violate Article 19 of ICCPR. The order imposing media shutdown: [a] is provided by law; [b] pursues a legitimate aim; and [c] is necessary and proportionate to threat. Hence, the Government order fulfils the requirements of **Three Part Test**.

VI. DOCTRINE OF PRIOR RESTRAINT

Prior Restraint is a type of censorship which is usually imposed by the Government on the expression of thoughts by the media and people aiming at prohibiting the specific type of expressions.

Prior Restraint is different from the censorship which provides restrictions of general subject matter which only focuses on reviewing the expression at a particular instance only after the expression took place. In various Countries, the practice of Prior Restraint is forbidden subject to certain exception.

The restriction on publication of information based on the previous publication of information cannot be considered as Prior Restraint.⁶¹ Prior Restraint can be issued by a Government only in case of prevention of present and clear danger.⁶² The expression threatening the immediate breach of Public Order is justified and permissible to be restricted.⁶³

It is necessary for a Court to show that the measures other than Prior Restraint will not be sufficient to effectively prevent the present and clear danger and Prior Restraint is important for

⁶¹ *Near v. Minnesota*, 283 US 697 (1931) 735.

⁶² *Schneck v. United States*, 249 US 47 (1919); *Abrams v. United States*, 250 US 616 (1919); *Dennis v. United States*, 341 US 494 (1951); *Nebraska Press Association v. Stuart*, 427 US 539 (1976).

⁶³ *Chaplinsky v. New Hampshire*, 315 US 568 (1942).

preventing such danger.⁶⁴ It is also necessary to be established that a method less restrictive in nature would not be sufficient to prevent the clear and present danger.⁶⁵

A. DOCTRINE OF PRIOR RESTRAINT IS UNCONSTITUTIONAL

The United States Supreme Court in the case of *New York Times v. United States*⁶⁶ held that the even if the information is sensitive in nature then also the Media and Newspapers have the liberty to publish the information under the Doctrine of no prior restraint. The US Supreme Court further held that the order of prior restraint restricting the media from publishing information should be presumed as unconstitutional.⁶⁷

B. EXCEPTIONS WHEN DOCTRINE CAN BE APPLIED

The Doctrine of Prior Restrain can be applied by the Government only in the case of clear and present danger.⁶⁸ And prior restraint can be applied only on the expressions which are justified as an immediate threat to Public Order.⁶⁹ One more requirement for applying prior restraint is that no less restrictive method is sufficient to curb the imminent danger.

The US Supreme Court in the case of *Near v. Minnesota*,⁷⁰ held that the doctrine of prior restraint curtails the freedom of speech and expression. However, the doctrine of prior restraint can be applied in exceptional cases of clear and imminent threat to national security.

C. PRIOR RESTRAINT AND MEDIA SHUTDOWN IN KASHMIR

On August 5, the Indian government cut all phone lines and internet connections in the Muslim-majority region of Kashmir without warning.⁷¹ This shutdown was imposed after the PM Narendra Modi revoked Article 370, which had granted autonomy to the hotly contested region of Kashmir since India and Pakistan gained independence in 1947.

⁶⁴ *U.S. Reports: Nebraska Press Ass'n. v. Stuart*, 427 U.S. 539 (1976).

⁶⁵ Kai Möller, *The Global Model of Constitutional Rights* (Oxford University Press ed. 2012); *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

⁶⁶ *New York Times Co. v. United States*, 403 U.S. 713 (1971).

⁶⁷ *Near v. Minnesota*, 283 U.S. 697 (1931); *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376 (1973); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

⁶⁸ *Nebraska Press Association v. Stuart*, 427 US 539 (1976); *Schneck v. United States*, 249 US 47 (1919); *Abrams v. United States*, 250 US 616 (1919); *Dennis v. United States*, 341 US 494 (1951).

⁶⁹ *Chaplinsky v. New Hampshire*, 315 US 568 (1942).

⁷⁰ *Supra* 61.

⁷¹ PTI (2019) '145 days of internet shutdown in Kashmir, no word on service restoration', *The Economic Times*, 27th December.

In the present case, Government imposed prior restraint keeping in mind the secessionist forces actively being aided by the Pakistan to create instability in Kashmir also increases the threat to the National Security of India. Therefore, the order passed by the Government is valid keeping in mind the clear and imminent danger to National Security and Public Order.

VII. CONCLUSION AND RECOMMENDATIONS

In 2019, the Indian Government led by Narendra Modi revoked article 370 of Indian Constitution which previously provided special status to Jammu and Kashmir. After the revocation of Article 370, complete media shutdown was imposed by the Indian Government on people and media from publishing information about the situation in J&K. Further, the Government imposed complete media shutdown curtailing the freedom of speech and expression keeping in mind the secessionist forces actively being aided by the Pakistan to create instability in Kashmir also increases the threat to the National Security of India

A. TERRITORIAL SOVEREIGNTY OF INDIA OVER JAMMU & KASHMIR

Shimla Agreement stated that the resolution of dispute over contested territory of J&K will be done in accordance with UN Charter. But the Removal of the name of J&K from the list of the contested and disputed territories put an end to the dispute.⁷² Further, India gained the territorial sovereignty over the territory of J&K coming under the LOC after this removal.

After Jammu and Kashmir coming under LOC became the territory of India, the Government of India gained the exclusive jurisdiction over Jammu and Kashmir to exercise its sovereign power over J&K and over the territorial community as well. Therefore, India exercising its sovereignty over J&K is valid under horizontal structure of modern international law.

The UN follows the principle that all the members are sovereign and all the members should be equally respected.⁷³ Further, the UN does not require any member to submit its domestic matters to UN for adjudication. And, after India achieved territorial sovereignty over the territory of Jammu and Kashmir, UN became unauthorized to intervene in the internal matters of Jammu and

⁷² PTI (2010) 'Jammu and Kashmir removed from list of disputes under UN', *The Economic Times*, 15 November; United Nations (2010) 'Jammu and Kashmir out of U.N. list of disputes', *The Hindu*, 15 November.

⁷³ *Charter of the United Nations and the Statute of the International Court of Justice 1945*, Article 2(1).

Kashmir. And hence, UN cannot intervene in the issue of India imposing complete media shutdown over J&K as a safeguard against the threat to national security.

B. MEDIA SHUTDOWN DOES NOT VIOLATE ARTICLE 19 OF ICCPR

India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10th April 1979.⁷⁴ Article 19 of ICCPR provides the fundamental right to freedom of Speech and Expression. The Media Shutdown imposed by Indian Government over the territory of J&K does not violate Article 19 of ICCPR. The order imposing media shutdown: [a] is provided by law; [b] pursues a legitimate aim; and [c] is necessary and proportionate to threat. Hence, the Government order fulfils the requirements of **Three Part Test**.

Prior Restraint can be issued by a Government only in case of prevention of present and clear danger.⁷⁵ In the present case, Government imposed prior restraint keeping in mind the secessionist forces actively being aided by the Pakistan to create instability in Kashmir also increases the threat to the National Security of India. Hence, Government order is valid keeping in mind the clear and imminent danger to National Security and Public Order.

⁷⁴ United Nations, *UN Treaty Database*, Available at: https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN.

⁷⁵ *Schneck v. United States*, 249 US 47 (1919); *Abrams v. United States*, 250 US 616 (1919); *Dennis v. United States*, 341 US 494 (1951); *Nebraska Press Association v. Stuart*, 427 US 539 (1976).

REFERENCES

➤ ARTICLES, BOOKS & UN DOCUMENTS

- Christian Marxsen (2015) 'Territorial Integrity in International Law – Its Concept and Implications for Crimea' *Heidelberg Journal of International Law*, 75.
- Department of Peacekeeping Operations, United Nations (2003) *India - Pakistan Background UNIPOM*.
- Donald W. Grieg (1998) 'Sovereignty, Territory and the International Lawyer 's Dilemma', *Osgoode Hall Law Journal*, VI(1).
- Fredrick Scheauer, Fear, Risk and the First Amendment: Unravelling the Chilling Effect, 58 *College of Williams & Mary School Faculty Publication* 685 (1978).
- Freedoms of opinion and expression, H.R.C General Comment No.34, U.N. Doc. CCPR/C/GC/34, ¶ 24 (September 12, 2011).
- G. Sperduti, 'Sovranità territoriale, atti di giurisprudenza ed effettività in diritto internazionale', *Riv. Dir. Intern.* 1959, 491-425 at 401, 417.
- Giovanni Distefano (2009) 'Theories on Territorial Sovereignty: A Reappraisal', *Research Gate*.
- Hannah Ellis- Petersen (2020) 'Hospitals, banks and travel companies to get broadband after five-month shutdown', *The Guardian*, [Online]. Available at: <https://www.theguardian.com/world/2020/jan/15/internet-partially-restored-kashmir-social-media-ban-stays> (Accessed: June 20, 2020).
- In Re Dutchy of Seeland, Administrative Tribunal of Cologne (RFG), 3 May 1978, in 80 ILR, at 685.
- J. Combacau, S. Sur, *Droit international public*, 5th Edition, Paris, Montchrestien, 2001, at 398-400.
- Jan Oster, *European and International Media Law* 39, 40 (Cambridge University Press ed. 2016).
- Johannesburg Principles on National Security, Freedom of Expression and Access to Information, UN Doc. No. E/CN 4/1996/39 (1996).
- K. Friker, *Vom Staatsgebiet*, Tubinga, Verlag der H. Laupp'schen Buchhandlung 1857, passim
- Kai Möller, *The Global Model of Constitutional Rights* (Oxford University Press ed. 2012).

- Ministry of External Affairs (July 24, 2012) *Shimla Agreement July 2, 1972*, Available at: https://mea.gov.in/in-focus_article.htm?19005/Simla+Agreement+July+2+1972 (Accessed: June 19, 2020).
- Peace and Security (2019) 'UN Security Council discusses Kashmir, China urges India and Pakistan to ease tensions', *UN News*, 16 August.
- PTI (2010) 'Jammu and Kashmir removed from list of disputes under UN', *The Economic Times*, 15 November
- PTI (2019) '145 days of internet shutdown in Kashmir, no word on service restoration ', *The Economic Times*, 27th December.
- R. Quadri, 'Le navi private nel diritto internazionale', 1939, in *Scritti Giuridici*, Vol. 1, Milan, Giuffrè 1988, 39-188 at 72; J. Combacau, S. Sur, supra note 18, at 396.
- Recueil Des Sentences Arbitrales (2006) 'Island of Palmas Case (Netherlands, USA)', (ed. II) *Reports of International Arbitral Awards*. : NATIONS UNIES - UNITED NATIONS, pp. 829-871.
- Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Material and Commentary* 524 (OUP 2nd ed, 2005)
- Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. No. E/CN.4/1984/4 (1984).
- Suy, 'Réflexions, sur la distinction entre la souveraineté et la compétence territoriale', in *Internationale Festschrift für Alfred Verdross, München-Salzburg*, W. Fink, 1971, 493-508, at 495.
- T. Perassi, 'Paese, territorio e signoria nella dottrina dello Stato', in *Riv. Dir. Pubbl.*, 1992, 146-160, at 146 ff.
- UN Resolutions, *Kashmir - The History*, Available at: <https://pakun.org/kashmir/history.php> (Accessed: June 19, 2020).
- United Nations (2010) 'Jammu and Kashmir out of U.N. list of disputes', *The Hindu*, 15 November.

➤ CASES

❖ National Cases

- *Abrams v. United States*, 250 US 616 (1919)

- *Chaplinsky v. New Hampshire*, 315 US 568 (1942)
- *CPIO v Subhash Chandra Aggarwal*, (2019) SCC OnLine SC 1459 (India)
- *Dennis v. United States*, 341 US 494 (1951)
- *Grayned v. Rockford*, 408 U.S. 104 (1972) (India)

- *Harichand v. Mizo District Council*, AIR 1967 SC 829 (India)
- *Himmatlal v. Police Commissioner*, AIR 1975 SC 87 (India); *Express Newspapers v. Union of India*, AIR 1958 SC 578 (India).
- *K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India)
- *Kartar Singh v. State of Punjab*, 1962 SCR (2) 395 (India)
- *M P Gangadharan v. State of Kerala*, AIR 2006 SC 2360 (India)
- *Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236 (India)
- *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India)
- *Near v. Minnesota*, 283 U.S. 697 (1931)
- *Nebraska Press Ass'n. v. Stuart*, 427 U.S. 539 (1976)
- *New York Times Co. v. United States*, 403 U.S. 713 (1971)
- *Om Kumar v. Union of India*, AIR 2000 SC 3689 (India)
- *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971)
- *Pathunma v. State of Kerala* AIR 1978 SC 771 (India)
- *Peoples Union for Civil Liberties v. Union of India*, AIR 2004 SC 1442 (India)
- *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376 (1973)
- *S Rangarajan v. P Jagjivan Ram*, (1989) 2 SCC 574 (India)
- *Schneck v. United States*, 249 US 47 (1919)
- *Superintendent v. Ram Manohar*, AIR 1960 SC 633 (India)
- *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*, AIR 1995 SC 2438 (India)
- *Teri Oats Estate Private Ltd v. U T Chandigarh*, 2004 2 SCC 130 (India)
- *Whitney v. California*, 274 U.S. 357 (1927)

❖ EuCHR Cases

- *Amann v. Switzerland*, App. No. 27798/95 Eur. Ct. H. R. ¶ (2000)
- *Autronic AG v. Switzerland*, App. No. 12726/87 Eur. Ct. H. R. (1990)
- *Barthold v. Germany*, Eur. Ct. H. R. (1985)
- *Gillberg v. Sweden*, App. No. 41723/06 Eur. Ct. H. R. (2012); *Leander v. Sweden*, App. No. 9248/81 Eur. Ct.
- *Goodwin v. United Kingdom*, App. No. 17488/90 Eur. Ct. H. R. (1996)
- H. R. (1987); *Gaskin v. The United Kingdom*, App. No. 10454/83 Eur. Ct. H. R. (1989)
- *Handyside v. The United Kingdom*, App. No. 5493/72 Eur. Ct. H. R. (1976)
- *Herrera-Ulloa v. Costa Rica*, Case no 12367 IACtHR, (2004)
- *Kopp v. Switzerland*, App. No. 23224/94 Eur. Ct. H. R. (1998)
- *Kruslin v. France*, App. No. 11801/85 Eur. Ct. H. R. (1990)
- *Lingens v. Austria*, App. No. 9815/82 Eur. Ct. H. R. (1986)
- *The Sunday Times v. The United Kingdom*, App. No. 6538/74 Eur. Ct. H. R. ¶ 49 (1979)
- *Thorgeirson v. Iceland*, App. No. 13778/88 Eur. Ct. H. R. (1992)

❖ ICJ Cases

- *Civil Liberties Organisation v. Nigeria*, Comm. No. 151/93 ACHPR (1995)
- *Hak-Chul Shin v Republic of Korea*, Comm. No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (2000)
- *Landinelli Silva v. Uruguay*, Comm. No. 34/1978, UN Doc CCPR/C/OP/1/34/1978 (1984)
- *Rafael Marques de Morais v. Angola*, Comm. No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005)
- *Womah Mukong v. Cameroon*, Comm. No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991, (1994)