

A PAPER ON THE NEED FOR LAWS DEALING WITH THE INTERNET IN INDIA

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ABSTRACT

The understanding of the importance of the internet in today's world is paramount. Advancement of technology is not complimented by the laws around the world on how to use them and providing reasonable limits on its usage. Most countries lag behind in providing a proper legal framework which will guide the usage of the ever changing and ever updating technology. The following study deals with the internet shutdowns that our country has seen in the history of its existence. All of such instances have occurred in the past decade of 2010-2019 and have continued on to this year as well. The study mentions some reasons as to why internet access was restricted by the administration of the various states to the people to tackle various situations that came up as a threat to peace and public order. It shows how disallowing access to the internet has become the first resort of the authorities due to the absence of a proper legislation that guides and protects the rights of an individual to use the internet. The study shows how the lack of a proper guiding mechanism on regulating internet access has affected the internet usage statistics of the country. India is the world's leader when it comes to internet shutdowns. The cost that is paid by the people when the administration abruptly decides to restrict access to internet under the garb of national security is in the form of individual freedom. A proper mechanism has been given by the Supreme Court while deciding whether the internet should be shut or not. This will help in reducing ambiguity and abruptness in the whole process. It cannot be used as an option in the pocket by the administration. The study concludes with suggestions for the legislative while drafting laws on dealing with the internet.

INTRODUCTION

The usage of internet has come a long way with the passage of time and has been growing wide. It has made our work simpler, reduced geographical distances and therefore has become a part and parcel of our life. The no of people who do not use the internet are

decreasing day by day. The wide usage of the internet is primarily because of the varied range of activities that can be done on the internet, communication being one of them. The internet does not discriminate among its users, meaning that the internet which is a boon to most of us also acts as a curse when terror outfits use it to spread violence and disturb peace.

Countries all over the world are facing security issues due to the increase of terror activities with the help of the internet. It has become difficult to understand whether we are in control of the internet or we are being controlled by it. The United Nations Office on Drugs and Crime in a report has highlighted that terror activities all over the globe are helped by the internet and finds that it is used for the purposes of spreading propaganda, financing outfits, training members, planning activities and executing them¹. Therefore it becomes pertinent for the countries to take action against the chances of such occurrences.

Kashmir is one area that has been subject to violence since India gained its independence in 1947. The valley has been subject to terror and insurgence ever since. Security concerns over the area are even today a huge headache for any government that comes to power. Different sets of governments have tried different ways of trying to reduce the violence in the state. In the previous decade it has been subject to attacks by international terror outfits. Therefore in 2019 the central government removed its special status which created its own wave of reactions. Ever since this policy was implemented the usage of internet in the valley has been highly restricted with a few relaxations once in a while. This has been done citing reasons of security and safety of a land which is prone to eruptions of violence. What is important to keep note of here is that Kashmir is not just a ground for terrorism and counter terrorism activities to lock horns but it is also a home to many citizens of the country.

In the above mentioned report of the United Nations, the government of the United Kingdom has highlighted that they have tried to find a balance between trying to curb terrorism but also to uphold the freedoms and benefits that the internet has provided to its citizens. This is something that the Indian government has not found a lot of success in while dealing with the Kashmir issue. India has seen a considerably large number of internet shutdowns in the last decade. So much so that it has secured the top rank in the list of countries with the number of internet shutdowns that they have had. As much as the internet is used by people to spread

¹ United Nations Office on Drugs and Crime, (2012), The Use of Internet for Terrorist Purposes, United Nations Organisation

terror it is used by every other person in many other ways. It is such a common tool that banning its usage is compared to restricting civil liberties in any country. Therefore shutting down the internet is taken as a last resort by most governments around the world.

INDIA'S INTERNET SHUTDOWN STATISTICS

India occupies the first position in the list of countries with the maximum no of internet shutdowns. Between January 2016 and May 2018 India has had a total of 158 internet shutdowns which is the highest that any country has ever reached.² Pakistan stands second to India in the list but has had only 19 instances of internet being shutdown. Countries such as Iraq and Syria have had only 8 instances each. Turkey occupies the 5th position with 7 instances, the Democratic Republic of Congo and Ethiopia have only had 5 shutdowns, Iran has had 4 and Chad and Egypt has had 3 each. These are the 10 countries with the maximum no of internet shutdowns in the whole world. All these countries have had their share of violence eruptions due to terrorism activities yet they have not restricted the access to internet as much as India has.

India's total number of shutdowns is higher than the added total of the rest of the countries in the top 10 list. Countries such as Iraq and Syria which have much higher instances of violence are in a lower position as compared to India. This shows that as much as the internet is used by terrorist to spread violence putting a complete ban to its access is not the only way to counter instances of violence eruption in the area.

In 2012 we've had 3 instances of internet being shut down. In 2013 that increased to 5 which further increased to 6 in 2014. By 2015 we've had already reached double digits as the country saw 14 instances. 2016 lead to a further increase bringing up the tally to 31. This kept on increasing every passing year with 2017 seeing 79 instances, 2018 having 134 instances and 2019's had a total of 106 instances of internet being shut down. There has been an increase in the rate of shutdowns every year with 2019 being the only exception.

In the recent years, India's tally of internet shutdowns have increased vehemently which leads to a belief that it is the favourite resort for the government whenever there is an adverse

² McCarthy N, (2018), 'The Countries Shutting Down The Internet The Most', Forbes Business, Aug 28, 2018, <https://www.forbes.com/sites/niallmccarthy/2018/08/28/the-countries-shutting-down-the-internet-the-most-infographic/#1373910a1294>

situation. In December 2019 when the country was drowning in protests against the Citizenship Amendment Act access to internet was again restricted in those parts of the country where things turned to get a little out of hand. Even the capital city of Delhi was not spared of this restriction to the usage of the internet. During this situation there was no external or internal terrorism activity going on yet internet access of people was restricted causing distress to them.

It is highly important to understand given the wide usage of the internet, limiting access to it causes a wide range of discomfort and difficulty to not only the people but also the country in general. Internet is used as a means of business by many and as per a report by The Indian Council for Research on International Economic Relations (ICRIER) it was found that since 2012 to 2017 a total of 16,315 hours of internet access has cost the Indian economy \$3.04 billion.³

SHUTDOWNS IN THE DIFFERENT STATES

Most of the states in India have had instances of internet being shutdown though the number of instances in different states varies. The following list of states is in the order of the number of internet shutdowns they've had with the no with the least instances being first.

- A. Karnataka – There has been only one instance when internet was shutdown in this state. In December 2019, mobile internet services were suspended in the state for 48 hours in Mangalore city and Dakshin Kannada district.
- B. Jharkhand – This state has also seen only one instance of internet being shutdown which was in 2016 when internet services were cut off for two days due to communal clashes in the town of Bokaro during Ram Navami celebrations.⁴
- C. Tamil Nadu – This state has seen a single instance of internet being shut in 2018 in three districts of Thoothukudi, Tirunelveli, and Kanyakumari due to protests in these districts against the Sterlite factory turned violent.⁵

³ McCarthy N, (2017) The Countries Shutting Down the Internet the Most, Statista, Jan 22, 2017, <https://www.statista.com/chart/15250/the-number-of-internet-shutdowns-by-country/>

⁴ Mishra A, (2016), 'Internet Services Blocked in Bokaro after Communal tension', The Times of India, April 16, 2016, <https://timesofindia.indiatimes.com/city/ranchi/Internet-services-blocked-in-Bokaro-after-communal-tension/articleshow/51856786.cms>

- D. Chandigarh – Internet services were blocked in this union territory only once as a precautionary measure in 2017 before the verdict against the Dera Saccha Sauda chief Gurmeet Ram Rahim Singh was declared. This was done for 3 days in anticipation of violence eruptions from the supporters of the God-man.⁶
- E. Uttarakhand – The comparatively new state has seen two instances of internet services being restricted both in 2018. Once as a precautionary measure in May when a Dalit youth was killed⁷ and another time in August as a precaution against violence eruption following the rape and murder of a twelve year old Dalit girl in Uttarkashi.⁸
- F. Telangana – Internet services have been cut off twice in this state once in 2017 as a precautionary measure when violence erupted due to clashes between Adivasis and Lambadas in the Adilabad district⁹ and once in Jan 2020 to curb protests against the Citizenship Amendment Act in Hyderabad during the Million March¹⁰.
- G. Nagaland – There are three instances of internet being cut off in this state once in 2015 when after a lynching video of a rape accused went viral¹¹ and in Jan 2017 when there

⁵ Ranipeta S, (2018), As Thoothukudi simmers, ‘TN asks internet providers to cut data services in 3 districts’, The News Minute, May 23, 2018, <https://www.thenewsminute.com/article/thoothukudi-simmers-tn-asks-internet-providers-cut-data-services-3-districts-81813>

⁶ Express Web Desk, (2017), ‘Ram Rahim rape case verdict LIVE: In video message, Dera chief asks followers to return home, maintain peace, August 25, 2017, <https://indianexpress.com/article/india/gurmeet-ram-rahim-singh-dera-sacha-sauda-chief-rape-case-cbi-punjab-haryana-security-dera-followers-live-updates-4810979/>

⁷ Rawat S, (2018), ‘Dalit youth killed allegedly over use of canal water in Haridwar village’, Hindustan Times, May 12, 2018, <https://www.hindustantimes.com/dehradun/dalit-youth-killed-allegedly-over-use-of-canal-water-in-haridwar-village/story-1gDYcUM0u9AM3OmaGo2BIN.html>

⁸ India Today Web Desk, (2018), ‘12 year old gangraped, killed by 4 men in Uttarkashi’, India Today, August 18 2018, <https://www.indiatoday.in/india/story/minor-gangrape-murder-uttarkashi-uttarakhand-1317927-2018-08-18>

⁹ Deccan Chronicle Web Desk, (2017), ‘Telangana: Internet cut in areas hit by clashes’, Deccan Chronicle, Dec 17, 2017, <https://www.deccanchronicle.com/nation/current-affairs/171217/telangana-internet-cut-in-areas-hit-by-clashes.html>

¹⁰ Hussain M, (2020), ‘Record turnout for Hyderabad’s anti-CAA-NRC-NPR Million March’, The Siasat Daily, January 5, 2020, <https://www.siasat.com/record-turnout-hyderabad-anti-cao-nrc-npr-million-march-1782839/>

¹¹ Kalita P, (2015), ‘Nagaland blocks internet services, imposes curfew in tense Dimapur’, The Times of India, March 9, 2015, <https://timesofindia.indiatimes.com/india/Nagaland-blocks-internet-services-imposes-curfew-in-tense-Dimapur/articleshow/46497164.cms>

were protests against the government's policy of implementing reservation in local body elections initially in Wokha and Phek districts but later on spread to the whole state and internet services were cut off a whole month.

- H. Assam – The state of Assam has seen three instances of internet being shut down twice in 2019 and once in 2018. In 2018 internet was suspended following the death of two men who were mistaken to be kidnappers and were beaten to death in the city of Guwahati¹². In May 2019 internet services were suspended in three districts due to curfew in the district of Hailakandi and later in December 2019 due to protests against the CA Act¹³.
- I. Punjab – There have been 4 instances of internet access being restricted in the state of Punjab. Once in 2017 along with Chandigarh during the verdict of the rape case against Gurmeet Ram Rahim Singh as a precaution to protests by the followers. Thrice in April 2018 due to strikes being called by Dalit groups¹⁴, and ensuing clashes between Dalits and Hindus¹⁵.
- J. Arunachal Pradesh – Internet services were first blocked in the state after the death of former CM Kalikho Pul in 2016¹⁶. In 2018 internet was blocked to ensure free and fair conduct of APPSCCE exams¹⁷ and in 2019 internet was blocked in two instances when

¹² Chowdhury R, (2018), '2 Men Mistaken For Child Kidnappers, Beaten to Death in Assam', NDTV, June 10, 2018, <https://www.ndtv.com/india-news/2-men-mistaken-for-child-abductors-allegedly-beaten-to-death-in-assam-1864964>

¹³ Bhattacharya A, (2019), 'Internet shutdowns are becoming second-nature to the world's largest democracy', Quartz India, December 13, 2019, <https://qz.com/india/1767383/assam-cab-protest-shows-internet-shutdowns-are-indias-new-normal/>

¹⁴ The Pioneer, (2018), 'Punjab to shut down today', The Pioneer, April 2, 2018, <https://www.dailypioneer.com/2018/state-editions/punjab-to-shut-down-today.html>

¹⁵ Bajwa H, (2018), 'Punjab: Phagwara again tense after Dalit youth injured in clash died, mobile internet services suspended', The New Indian Express, April 28, 2018, <https://www.newindianexpress.com/nation/2018/apr/29/punjab-phagwara-again-tense-after-dalit-youth-injured-in-clash-died-mobile-internet-services-suspe-1807929.html>

¹⁶ Jaiswal U & Das PK, (2016), 'People's CM' laid to rest', The Telegraph, August 12, 2016, <https://www.telegraphindia.com/india/people-s-cm-laid-to-rest/cid/1494128#.V7aGI9GY7rd>

¹⁷ TNM NewsDesk, (2018), 'Arunachal govt orders suspension of internet across state for APPSC exam', The News Mill, July 19, 2018, <https://thenewsmill.com/arunachal-govt-orders-suspension-of-internet-across-state-for-appsc-exam/>

- protests emerged against Permanent Residencship Bill in February and in December against the Citizenship Amendment Bill¹⁸.
- K. Tripura – Internet in the state has been cut off in 5 instances. Twice in 2017 to prevent Indigenous Peoples Front of Tripura from spreading propaganda while demanding for a separate state and later in Agartala following the death of a journalist while covering a clash between two political parties¹⁹. In 2018 internet services were restricted once in the month of June. In 2019 internet was cut off twice due to protests against the citizenship bill going out of hand²⁰.
- L. Odisha – In 2017 internet was cut off twice in the month of April due to communal disturbances over derogatory comments on Hindu deities²¹. In 2018 internet was suspended in one district as a precaution before celebrations of Ram Navami. In 2019 internet access was restricted twice, both times as precautionary measures when clashes broke out between two groups including once during Eid celebrations²².
- M. Meghalaya – Meghalaya has seen 6 instances of internet being shutdown. Once in 2015, thrice in 2018, and once each in 2019 and 2020. All of these restrictions were imposed to

¹⁸ HT Correspondent, (2019), 'India's record on internet shutdown gets bleaker; now blocked in 2 NE states', Hindustan Times, December 11 2019, <https://www.hindustantimes.com/india-news/amid-anti-citizenship-bill-protests-internet-shutdown-in-tripura-arunachal/story-jqR4jxiJexKbKIivV6XZBP.html>

¹⁹ Outlook Web Bureau, (2017), 'Internet Services Suspended in Tripura, after Journalist Santanu Bhowmick Hacked to Death', Outlook India, September 21, 2017, <https://www.outlookindia.com/website/story/internet-services-suspended-in-tripura-after-journalist-santanu-bhowmik-hacked-t/301994>

²⁰ Agarwala T et al, (2019), 'North-East Bandh HIGHLIGHTS: Tripura govt cuts off internet for 48 hours, CM Deb claims no effect of anti-CAB strike', The Indian Express, December 10, 2019, <https://indianexpress.com/article/north-east-india/north-east-bandh-today-live-updates-citizenship-bill-protests-6159534/>

²¹ Press Trust of India, (2017), 'Internet services suspended in Odisha's Kendrapara', The Times of India, April 19 2017, <https://timesofindia.indiatimes.com/city/bhubaneswar/internet-service-suspended-in-odishas-kendrapara/articleshow/58263104.cms>

²² Press Trust of India, (2019), 'Internet suspended in Odisha town following skirmish', Business Standard, June 5, 2019, https://www.business-standard.com/article/pti-stories/internet-suspended-in-odisha-town-following-skirmish-119060500973_1.html

curb eruptions of violence in various regions in the state including protests against the CAA²³ and control situations in the Khasi and Garo hills²⁴.

N. Manipur – The state of Manipur has seen 6 instances of internet being shut with 1 instance in 2015, 2016, 2019 and 2020 each and twice in 2018. Reasons for such restrictions range from clashes of students with university administrations²⁵, to prevent protests against the CA Act. Internet was also for something as meagre as shut down when two villages fought over a land dispute²⁶.

O. Madhya Pradesh – Madhya Pradesh has seen 7 instances of internet shutdown. Once in 2017 following farmer protests²⁷, thrice in 2018 during rumour spread and violence eruptions about a Bharat Bandh²⁸. More shutdowns came into effect during protests against the Citizenship Act in 2019 and 2020²⁹.

P. West Bengal – The state of West Bengal has seen 10 instances of internet access being cut off. The reasons for such restrictions were clashes between political parties in various

²³ Asian News International, (2019), 'Mobile internet services suspended for 48 hours in Meghalaya', India Today, December 13, 2019, <https://www.indiatoday.in/india/story/mobile-internet-services-suspended-for-48-hours-in-meghalaya-1627874-2019-12-13>

²⁴ Press Trust of India, (2018), 'Mobile internet services suspended in seven districts of Meghalaya', The Indian Express, June 16, 2018, <https://indianexpress.com/article/india/mobile-internet-services-suspended-in-seven-districts-of-meghalaya-5220431/>

²⁵ Staff Reporter, (2018), 'Manipur University news updates: BHU council mulls suspending AP Pandey from university over MU raid controversy', FirstPost, September 21, 2018, <https://www.firstpost.com/india/manipur-university-news-updates-bhu-council-mulls-suspending-ap-pandey-from-university-over-mu-raid-controversy-5230261.html#live-blog-20180921154146>

²⁶ Ningomba B, (2020), 'Mobile internet shut after Manipur clash', The Telegraph, March 17, 2020, <https://www.telegraphindia.com/states/north-east/mobile-internet-shut-after-manipur-clash/cid/1754384>

²⁷ Staff Reporter, (2017), 'Mandsaur farmers' protest: One killed, four injured after police firing in Madhya Pradesh' FirstPost, June 6, 2017, <https://www.firstpost.com/india/mandsaur-farmers-protest-one-killed-four-injured-after-police-firing-in-madhya-pradesh-3523001.html>

²⁸ HT Correspondants, (2018), 'Bharat Bandh Highlights: Dalit protests spread across north India; 9 killed in Madhya Pradesh, Rajasthan UP', FirstPost, April 3, 2018, <https://www.hindustantimes.com/india-news/bharat-bandh-live-mobile-internet-services-suspended-security-clampdown-in-punjab/story-4pBLmzxsxGa2aRyKYBlmQ0K.html>

²⁹ Barik S, (2020), 'Internet shutdown in Jabalpur as 'precautionary measure' against anti-CAA protests', Medianama, January 31, 2020, <https://www.medianama.com/2020/01/223-internet-shutdown-jabalpur/>

parts of the state, clashes erupting due to objectionable content being posted by a 17 year old boy on Facebook³⁰, after a Muslim hawker was beaten to death by a group of people forcing him to chant 'Jai Shree Ram'³¹ and the customary protests against the Citizenship Act like most of the states³².

Q. Bihar – There have 11 times when the internet in this state was cut off. Twice in 2016, thrice in 2017, five times in 2018 and once in 2019, all because of arising of communal clashes between various groups on different instances such as during the immersion of the idol of Goddess Durga³³ and during celebrations of Ram Navami³⁴.

R. Maharashtra – Maharashtra has seen 11 instances of internet being cut off. This includes two instances in Nashik in 2016 and 2017. There were 6 instances in 2018 over issues arising from demands of Maratha quota³⁵. Internet was shut down thrice during 2018, 2019 and 2020 on the anniversary of the battle of Bhima Koregaon³⁶.

³⁰ FE Online, (2017), ' West Bengal communal violence: Internet services disrupted in Baduria following clashes in North 24 Parganas', Financial Express, July 5, 2017, <https://www.financialexpress.com/india-news/west-bengal-communal-violence-baduria-internet-services-disrupted-mamata-banerjee-facebook-post-north-24-parganas-protest/749676/>

³¹ Banerjee M, (2019), 'After Reports Of Communal Tension, Internet Suspended In Bengal's Asansol', NDTV, July 25, 2019, <https://www.ndtv.com/india-news/asansol-after-reports-of-communal-tension-internet-suspended-in-bengals-asansol-2075484>

³² Kundu I, (2019), 'CAA keeps Bengal on boil, internet shut down in 6 districts', India Today, December 16, 2019, <https://www.indiatoday.in/mail-today/story/caa-keeps-bengal-on-boil-internet-shut-down-in-6-districts-1628540-2019-12-16>

³³ Kumar A, (2019), 'One dead, 12 injured in communal clash in Bihar's Jehanabad', Hindustan Times, October 12, 2019, <https://www.hindustantimes.com/india-news/one-dead-12-injured-in-communal-clash/story-mJ41o198Q00wL305dMUtyN.html>

³⁴ Gunjan RK, (2018), 'Bihar communal clashes: How Ram Navami Procession in Nalanda Lost Its Way', News18, March 28, 2018, <https://www.news18.com/news/india/bihar-communal-clashes-how-ram-navami-procession-in-nalanda-lost-its-way-1705533.html>

³⁵ Mendonce G, (2018), 'Maratha quota stir: Internet services suspended in Navi Mumbai', The Times of India, July 26, 2018, <https://timesofindia.indiatimes.com/city/mumbai/maratha-quota-stir-internet-services-suspended-in-navi-mumbai/articleshow/65144524.cms>

³⁶ Express News Service (2020), '202nd Anniversary of Battle of Koregaon Bhima: Internet services shut', The Indian Express, April 30th, 2020, <https://indianexpress.com/article/cities/pune/202nd-anniversary-of-battle-of-koregaon-bhima-internet-services-shut-6194731/>

- S. Gujarat – Gujarat has seen 11 instances of internet access being restricted. The first instance being in 2014 for three days in Vadodara³⁷. In 2015 alone there have been 5 times when internet was disconnected in the state, thrice in 2016 and once each in 2017 and 2018 mostly to control riots and as precautions to volatile situations. In 2016 internet was suspended to prevent cheating in the Revenue Accountants Recruitment Examination³⁸.
- T. Haryana – Haryana has seen 13 instances of internet being shut down. 4 instances of which happened in 2016, 8 instances in 2017 and once in 2019. Most of the shutdowns in 2016 and 2017 were to control Jat agitation³⁹ and as a precaution before the verdict of the rape case against Godman Gurmeet Ram Rahim Singh.
- U. Uttar Pradesh – With this state begins all the states which have individually had more internet shutdowns than countries in the top 10 list of countries as per their internet shutdowns. UP has seen 29 instances of internet being shut down. Twice in 2016 and 2017 each, 8 times in 2018, 16 times in 2019 and once in 2020. The reasons for these lockdowns are nothing out of the reasons that the previously mentioned states have used to restrict access of the internet. Reasons revolve around control and prevention of riots between different groups, communal violence and control agitations in response to police violence⁴⁰.
- V. Rajasthan – The state of Rajasthan has the second highest number of internet shutdowns with a total of 68 instances out of which 30 times have been in 2018, 19 times in 2017, 12 times in 2019, 6 times in 2016 and once in 2015. Reasons for these lockdowns are again

³⁷ TNN, (2014), 'Internet services blocked in Vadodara after riots', The Times of India, September 28, 2014, <https://timesofindia.indiatimes.com/city/vadodara/Internet-services-blocked-in-Vadodara-after-riots/articleshow/43674499.cms>

³⁸ Zee News Desk, (2016), 'Mobile internet services blocked for 4 hours in Gujarat – Know why', Zee News, February 28, 2016, https://zeenews.india.com/news/india/mobile-internet-services-blocked-in-gujarat-know-why_1860264.html

³⁹ Express Web Desk, (2016), 'Jat quota stir: Mobile internet services blocked in Rohtak after clashes over reservation', The Indian Express, February 19, 2016 <https://indianexpress.com/article/india/india-news-india/rohtak-jat-reservation-mobile-internet-blocked-haryana/>

⁴⁰ Staff Reporter, (2019), 'Meerut remains tense after Muslims protesting against Tabrez's death turned violent, main accused Badar Ali arrested', OpIndia, 6 July, 2019, <https://www.opindia.com/2019/07/meerut-remains-tense-after-muslims-protesting-against-tabrezs-death-turned-violent-main-accused-badar-ali-arrested/>

very similar to what other states have seen as a on opportunity such as to control situations of mobs killing people, communal tension, a long protest by farmers⁴¹ and even for conducting exams. Internet was cut off when peace was threatened during religious celebrations. These are just a few reasons out of a lot more but they are nothing which some other state has not used to shut down the internet.

This list shows that internet access has been restricted in the country even without any external threat or aggression. Situations which have existed long before the internet came into society are dealt with by prohibiting access to the internet. Extreme arbitrariness lingers as the access to internet is used as the first priority in dealing with every situation that gets out of hand without showing any care or regards for the general public who have nothing to do with the arising of these situations but have to suffer to due to the administration's defence techniques and strategies.

Most of the circumstances which have led to the internet being restricted are precautionary measures to beef up security over concerns of peace being threatened. The next part of the study speaks of the one state which has been pray to internet shutdowns like no other state has. It would not be wrong to say that the state has been in a difficult situation for a long time now.

THE OFFLINE KASHMIR

Jammu & Kashmir and Ladakh- The erstwhile state of Jammu & Kashmir has seen the most frequent internet shutdowns and they have been for long stretches. This is the only state which has had internet shutdowns for reasons which are not common among the other states. There has been a total of 180 times when internet was not available to the citizens living in the mountain state, some of which include complete discontinuation of communication lines for long periods of time. Internet shutdowns began in Kashmir in 2012 with only 3 instances in the year. The count increased to 5 per year during 2013, 2014 and 2015. In 2016 there were 10 instances of internet being switched off. In 2017 Kashmir witnessed 32 instances which increased to 65 in 2018. In 2019 Kashmir witnessed 55 internet shutdowns. These

⁴¹ Dhara T, (2017), 'Sikar Standoff: Farmers Lay Siege to Collectorate, Internet Services Shut', News18, September 11, 2017, <https://www.news18.com/news/india/sikar-standoff-farmers-lay-siege-to-collectorate-internet-services-shut-1515473.html>

shutdowns, unlike the rest of the states, have been for very long periods of time with three instances being at a stretch of more than a hundred days.

Internet shutdowns were the first resort to security needs in the area as restrictions were imposed when Afzal Guru was executed⁴² and Burhan Wani was killed⁴³. Internet has been suspended even after the killing of a Hizbul Mujahideen terrorist⁴⁴. Any encounter of the counter-terrorists with the terrorists have led to internet being shut⁴⁵

The next and the longest shutdown in the history of India is the one which has not been completely lifted yet.⁴⁶ The 72nd Republic Day of India marks the 175th day of a continued internet shutdown in the valley. It was imposed on the 4th of August in 2019 when the special status and the statehood of the area was removed and changed into two separate union territories. The Presidential order 272 dated the 5th of August brought into effect the political changes in the country.⁴⁷ The internet was shut down to prevent any occasions of violence. On the 27th December 2019, the shutdown was lifted from Kargil. The blockade was on landline as well as mobile services, out of which the ban on the landline was lifted but internet services are still suspended in different parts of Kashmir. On the 25th January 2020,

⁴² PTI, (2013), 'Mobile Internet Services restored in Kashmir Valley', The Economic Times, February 16, 2013, <https://economictimes.indiatimes.com/tech/internet/mobile-internet-services-restored-in-kashmir-valley/articleshow/18527772.cms?intenttarget=no>

⁴³ Express News Services, (2016), 'Jammu Temple Row: Mobile internet services restored across state', The Indian Express, June 18, 2016, <https://indianexpress.com/article/india/india-news-india/jammu-temple-row-mobile-internet-services-restored-across-state-2861163/>

⁴⁴ PTI, (2017), 'Mobile internet services suspended in Kashmir', The Economic Times, May 27, 2017, <https://economictimes.indiatimes.com/news/politics-and-nation/mobile-internet-services-suspended-in-kashmir/articleshow/58871234.cms>

⁴⁵ Web Admin, (2019), '36-hour encounter ends in Shopian: 2 militants, non local labourers, soldiers killed', 5 Dariya News, August 3, 2019, <https://www.5dariyanews.com/news/270176-36-hr-long-encounter-ends-in-Shopian-2-militants-non-local-labourer-soldier-killed>

⁴⁶ Staff Correspondent, (2019), 'Omar Abdullah, Mehbooba Put Under House Arrest, Internet Services Snapped as Kashmir Remains Tense' News18, August 18, 2019, <https://www.news18.com/news/india/omar-abdullah-mehbooba-put-under-house-arrest-internet-services-snapped-as-kashmir-remains-tense-2257393.html>

⁴⁷ Das K, (2019), 'Kashmir Highlights: Internet services shut down in Kargil after protests', India Today, August 9, 2019, <https://www.indiatoday.in/india/story/kashmir-jammu-article-370-live-updates-modi-situation-srinagar-pakistan-1578471-2019-08-08>

2G services were restored for verified users to be able to access only white-listed websites with social media platforms still finding no way to reach the citizens in the valley. This joy was also short lived as on 26th January, 2020 services were again snapped due to security concerns till 4PM.

THE JUDICIAL INTERVENTION ON RIGHT OF CITIZENS ON USAGE OF INTERNET

*The Case of Anuradha Bhasin v Union of India*⁴⁸:-

A. Facts:

Petitioners Anuradha Bhasin and Ghulam Nabi Azad approached the Supreme Court under Article 32 of the Indian Constitution seeking an “issuance of an appropriate writ for setting aside or quashing any and all order(s), notification(s), direction(s) and/or circular(s) issued by the Respondents under which any/all modes of communication including internet, mobile and fixed line telecommunication services have been shut down or suspended or in any way made inaccessible or unavailable in any locality. Further, the Petitioners sought the issuance of an appropriate writ or direction directing Respondents to immediately restore all modes of communication including mobile, internet and landline services throughout Jammu and Kashmir in order to provide an enabling environment for the media to practice its profession.”

They also pleaded “to pass any appropriate writ or direction directing the Respondents to take necessary steps for ensuring free and safe movement of reporters and journalists and other media personnel.” Also pleaded “for framing of guidelines ensuring that the rights and means of media personnel to report and publish news is not unreasonably curtailed.”

On 16th August 2019, Ghulam Nabi Azad was listed before a Co-ordinate Bench of the SC on his complaint of being stopped while from travelling to his constituency in J&K. The SC permitted him to visit the districts of Jammu, Anantnag, Baramulla and Srinagar. The court also ordered a relaxation on the various restrictions and asked the government to take steps to bring back normal life.

B. Issues:

The case in front of the Supreme Court had a lot issues to answer. Since this study

⁴⁸ Anuradha Bhasin v Union of India, 2020 SC OnLine SC 25

delves only on the aspect of internet blockage being a violation to fundamental rights therefore it will only take those relevant parts from the judgement to showcase the submissions of both the petitioner as well as the respondent which help in establishing the situation that led to the ground breaking declaration by the Supreme Court about internet blockages.

The judgement of the Supreme Court acts as a check to unprecedented power exercised by the central government over the Kashmir area which compromises the individual rights of the citizens over the garb of national security.

The issues faced by the court relevant to the topic of discussion are:

1. Whether the freedom of speech and expression and freedom to practice 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 IC?
2. Whether the government's action of prohibiting internet access valid or not?

C. The Arguments of the Petitioner:

There were two counsels that spoke for the petitioner's side. They were Ms. Vrinda Grover, the famous lawyer who appeared for SAR Geelani in the 2001 Parliament Attack and the other being senior advocate Kapil Sibal who has formerly held the post of additional solicitor general of India.

Ms. Vrinda Grover –The non-availability of internet services led to a grinding halt to her print media which in her view is absolutely necessary for the modern press. The curtailment of internet services is a restriction to free speech and should be tested on the basis of reasonableness and proportionality. The procedure of restricting internet services is provided under the Temporary Suspension of Telecom Services (Public Emergency or Public Services) Rules, 2017 which provide that the restrictions to be of temporary nature. The counsel argued that the orders were not in consonance with these rules and also contended that the orders have to be based on apprehension of danger to a law and order situation. Therefore, as public order is different from law and order so the situation prevailing at the time of passing the orders did not warrant its passing.

Mr. Kapil Sibal – The counsel submitted that restrictions can be made under Section 144 of the CrPC only if there is a challenge to the law and order situation but the

orders do not indicate any such situations that had arisen. Emergency can be declared on either 'internal disturbance' or 'external aggression' but no such situation had arisen therefore the imposition of the restrictions which are similar to declaring emergency has no grounds. The counsel upheld that restrictions under Sec 144 of the CrPC cannot be done to state as a whole but only that specific group of people who are likely to affect peace. Any ban on communication services has to be made as the rules given in sec 5 of the Telegraph Act, 1885. No blanket ban can be imposed but only a distinction should be drawn on social media or mass communication and the internet in general. The least restrictive options should be put to use as the state should always keep in mind the balance between the fundamental rights of the individuals and the duty of the state to provide safety. Referring to orders passed in Bihar and Jammu & Kashmir in 2017 the counsel spoke of how a less restrictive measure like bans on social media platforms such as Facebook and WhatsApp can be used because a ban on the internet also acts as a restriction on the right to trade.

D. The Response of the Respondents:

There were two counsels on the responding side with Mr. KK Venugopal, the Attorney General of India and Mr. Tushar Mehta, the solicitor general of India appearing on behalf of the Union of India.

Mr. K.K Venugopal (Attorney General of India) – The steps taken by the government was a complete necessity given the situation going on in J&K. The background facts and circumstances forced Sec 144 of the CrPC to be imposed on the state. Making reference to 2016 when a similar situation came up and the government acted in the same way.

Mr. Tushar Mehta (Solicitor General for the state of J&K) – Stating that the state has been subject to both physical and cross border terrorism the measures were absolutely necessary. Claims made by the plaintiffs were wrong in fact because movement was not restricted and schools initially closed were all opened later on. The magistrates who passed the order to impose sec 144 were in the best position to make such a decision. The government had taken measures to see that restrictions were relaxed as much as possible and make essentials available to people. The restricted use and limitations on internet was made only because social media could be used to

propagate violence, fake news and pictures and also that the dark web can be used for the purchase of weapons and illegal substances easily. Creating a distinction between print media and the internet as a medium of free speech, the counsel said the internet is a two-way communication medium and that this distinction should be kept in the mind of the court while making decisions. Some photographs, tweets and messages of political leaders of Kashmir are highly misleading, abrasive and detrimental to the sovereignty of India. It was also stated that it is not possible to ban certain parts of the internet and let the rest of it function. In conclusion he stated that the orders passed were in consonance with the suspension rules and were also being reviewed strictly.

E. A breakdown of the Judgement:

On the fundamental rights under part III and the restrictions on it:

1. Fundamental rights are all negative rights except Article 21A which requires the government to take special steps to look at its implementation.
2. The court made a reference to G. Cerf who argued that the internet however important it be, it cannot be elevated to the level of a human right. Technology is an enabler of rights and not a right in itself.
3. The court did not find a dispute in the fact that the freedom of speech and expression includes the right to disseminate information to a very large part of the population which different fields of media have helped in expanding which was upheld by the court in various previous instances. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and so any restriction on the same has to be made in accordance with Article 19(2) of the IC.
4. The court held that there are certain trades that are completely dependent on the internet and therefore the freedom of trade and commerce through the internet as a medium is protected under Article 19(1)(g) subject to the restrictions provided under article 19(6).
5. The contention of the plaintiffs that the restrictions under Article 19(2) cannot allow a blanket ban on the internet is not correct as there have been previous cases where such a situation was allowed.
6. The court stated that the situation of Jammu and Kashmir makes it a special scenario as from 1990 to 2019 there have been 71,038 recorded incidents of violence, 14,038 civilians dead, 5,292 security personnel martyred. Modern terrorism relies on the

internet as operating on the medium does not require substantial expenditure and is not traceable. The war-like situation going on in the valley brings in concerns of national security to higher than normal level. The question that is therefore required to be answered is whether the internet usage that provides the fundamental rights to the citizens also compromise on national security in a place which has seen only turmoil in its past. The court delved into US jurisprudence to understand the position of their first amendment rights during the civil war and the world wars.

7. It goes without a doubt that the government is entitled to restrict the freedom of speech and expression if the need arises. The question that arises is of the extent of the power to restrict and not of its existence.
8. The court observed that no right is absolute and therefore restrictions can be put in by the government given that they are reasonable. In determining the quantum of the restriction to be applied the court mentions the constitutional jurist Kai Moller who stated that the proportionality principle is the tool that helps judges in resolving these conflicts. This doctrine lays down four steps which are: (a) legitimate goal test (b) rational connection test (c) the necessity test and (d) balancing stage. The Oakes test is also a test which helps in ascertaining the level of restriction to levy.
9. The four pronged test follows that:
 - The action must be sanctioned by the law.
 - The proposed action must be necessary in a democratic society for a legitimate aim.
 - The extent of such interference must be proportionate to the need for such interference.
 - There must be procedural guarantees against abuse of such interference.
10. The court in this judgment has laid a lot of emphasis and mentioned more than once that the least restrictive measure should be used by the government when applying a ban on the internet usage over the state and the court does not accept a complete blockage on internet services over the erstwhile state.

F. On Internet Shutdown:

1. The court then looked into the procedural part of the implementation of the ban stating that procedural justice is of equivalent importance to substantive justice.

2. The procedure is divided into two parts:
 - Contractual - The contract signed between Internet Service Providers and the Government
 - Statutory – IT Act, 2000; CrPC, 1973; Telegraph Act, 1885.
3. The court's jurisdiction as per the petition is only the procedure given in the Telegraph Act.
4. The government cannot implement a general restriction on the internet using this section as it allows only particular websites to be blocked.
5. The court feels that a complete and broad suspension of the internet is a drastic measure and therefore the state must assess an alternate remedy which would be less intrusive. The suspension rules have gaps which should be looked at by the legislature.
6. One of the gaps would be using the word 'temporary' without defining any maximum duration for the suspension to be in effect. This ambiguity allows disproportionate exercise of power.

SUGGESTIONS

Internet provides a lot more than just social media. Therefore banning its usage just to stop violence spread via social media falls short of logic. The judgement of the Supreme Court has opened a plethora of opportunities for the legislature to make laws on. Various countries in the world face a lot more threats with regards to violence and terrorism but still India tops list of most number of Internet shutdowns.

The following suggestions are therefore proposed by the researcher:

- A. Creating a law which differentiates between the various facets of the internet. If internet has to be shutdown at all then only a specific portion should be shut which will help curb spreading of violence. Protecting the interests of the individual who use internet as a source of employment.
- B. Using the internet as a medium to identify sources of fake messages, terror funding and other possible threats that cause damage to the integrity and spirit of the nation.

- C. Making of a law that will show the provide act as a check on the administration which can now, due to a lack of it, arbitrarily switch off the internet in any area as the first resort when any problem arises.
- D. Situations such as cheating in exams, violence over election issues, communal riots of a certain degree should not be allowed as reasons to restrict internet.
- E. There should be a proper framework which says how long the internet can be restricted if it is necessary to be done.
- F. Protecting the interests of the innocent who fall prey to the crossfire situations in Kashmir by lifting blanket bans on the whole erstwhile state and instead using the internet to identify the specific areas of violence eruption and having connectivity services running so that smooth coordination is possible between the citizens and their protectors. The internet could be used to communicate with people who get trapped when terror attacks are carried out.
- G. The internet is a medium by which a lot of people earn their livelihood; laws introduced by the government should protect the interests of these people who depend on the internet a lot more than any average person.

CONCLUSION

As much as public safety is important and required for the general good of the people but that cannot substitute rights of the individual. The Indian government has been using internet shutdowns as the first resort on any instance of violence. It is not only the issue of Kashmir in which the government uses such measures but even during protests against the Citizenship Amendment Act internet usage was highly restricted in various parts of the country. If the only way to reduce or prohibit violence was shutting down of internet services then countries such as Syria, Yemen and Palestine, where violence is a lot higher than in India, would all be topping charts of internet shutdowns. But that is not the reality and therefore it shows that security issues can be dealt by without restricting internet services.

Restricting the internet has more demerits than merits. As the Supreme Court correctly observed that the internet is used as means for a lot of businesses therefore restricting access to it would go against the fundamental rights of the country. The internet is a lot more than

just a service in today's world it is a medium of expression and communication and therefore is very closely related to the individual rights of the people.

While providing security and keeping law and order in the country is extremely important, switching off the internet access of the people should not be the first option that is executed. This is because restricting access in an area affects a lot more people than those who are responsible for breaking law and order. Circumstances which have led to the internet being shut down have been there in existence long before the internet came into effect and that proves that there are other methods of tackling such issues. The cops of the country and the army will have no job to keep if the internet is what controls peace and tranquillity in the country.

The government shows reasons such as cutting off communications between people likely to affect peace, to curb fake news and control protests but in a democratic country the government needs to make sure that the citizens are well provided for. Implementing a blanket measure which subdues individual interests is equal to asking an innocent family member to pay for the crimes of their kin.