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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ANURADHA BHASIN V UNION OF INDIA

AUTHORED BY - PRIYANSHU RAJ

(Case analysis)

(development of right to access of internet as a constitutional right) (Proportionality of restrictions on internet)

(Internet and freedom of trade and commerce) (internet with relation to freedom of speech and press)

(Development of right of freedom of speech and press)

Abstract:-

Evaluation of the case Anuradha bhasin v union of India.

The purpose of this article is to find the essence of the right to use the internet in India.

Or what happens if we are deprived of the use of the internet. How it affects the trade and commerce of the Indian state. And what are the actions we can take on the government against the shutdown of the internet. In this article we can get to know about the constitutional validity of the internet shutdown in the state of Jammu Kashmir. How is freedom of press affected by internet shutdown? And when there is application of section 144 of the crpc then how the rights of media person is hampered and they are deprived of their right

The judgement marked a significant advancement in digital rights jurisprudence. Balancing national security considerations with the preservation of civil liberties and freedom of the press in a democratic society.

Background:-

The case of Anuradha bhasin v union of India is a result of the political and constitutional changes that emerged in the state of Jammu Kashmir in August 2019.

Following the abrogation of the article 370 of Indian constitution and change in status of state of jammu kashmir into two union territories.

The government of India imposed restrictions on the movement, public assembly and communication across the region.

On 4 August 2019 all internet and telecommunication services were suspended as a preventive measure to maintain public order and national security.

Section 144 of crpc issued that restricts the public gathering. As a result, these restrictions impacted the daily life of the public and function of the press. Ms Anuradha Bhasin executive editor of the Kashmir times and Mr Ghulam Nabi Azad member of parliament they approached the supreme court of India under article 32 of Indian constitution against the order of government on restrictions of internet and imposition of section 144 of code of criminal procedure . and how these restrictions hampered their fundamental rights under article 19(1)(a),19(1)(g) and 21 of the constitution .

(freedom of speech and expression)

(freedom of movement)

(practice of any profession)

The petitions raised critical constitutional questions regarding the legality and the proportionality of internet shutdown, scope of power of section 144 of code of criminal procedure and the relationship between national security and civil liberties in democratic society.

The supreme court judgement delivered in January 2020

Become a cornerstone in India's evolving jurisprudence on digital rights and governmental accountability in times of emergency.

Analysis:-

The supreme court in the case of Anuradha Bhasin v. Union of India undertook a constitutional examination of the limits of state power to restrict fundamental rights in the name of security.

The bench led by justice N.V.Ramana applied the test of legality, necessity , and proportionality to assess the validity of the internet shutdown and movement restrictions imposed in jammu kashmir .

1) Production And Publication Of Orders: -

In democratic society it is very necessary for the government to be a transparent government. and accountable to the public. The court criticised the government because they lacked the production of the orders before the court.

Lon. L. Fuller said that “there can be no greater legal monstrosity than the secret statute”.

According to James Madison “a popular government without popular information or the means acquiring it , is but a prologue to a farce or a tragedy. or perhaps both knowledge will forever govern ignorance and a people who mean to be their own governor must arm themselves with the power which knowledge gives” .

And a transparent government is very essential for the rule of law.

2) Internet shutdown and Fundamental rights:-

The court recognized for the first time that freedom of speech and expression and right to carry trade and business through the internet are protected under article 19 (1)(a) and 19(1)(g). While the state may impose restrictions under article 19(2) and 19(6). And such restrictions must be reasonable and the appropriate

3) application of section 144 of cr.P.C. :-

The state does not have power to use section 144 as a blanket to put continuous restrictions over an entire region. This section is used as preventive measures against any group of people not in the entire state. So this remains subject to judicial review.

4) Freedom of press :-

The court held that the unrestricted press is very important for democracy. and imposing restrictions on it is a suppression of the rights of a media person . It directed the government to ensure that media freedom is not curtailed under the guise of maintaining law and order .

5) Balancing liberty and security:-

The state must maintain a balance between national security and civil liberties. There are fixed circumstances in which the principle of restrictions is used on the fundamental right. They are in case of an emergency where there are no circumstances in which the restrictions were strictly imposed there are no circumstances of external and internal aggression.periodic review of restrictions underscored its efforts to prevent arbitrary executive actions .

Findings:-

- Internet access, while not a standalone fundamental right, is a crucial medium for exercising rights under article 19 (1)(a) and 19(1)(g).
- The government must publish, review, and justify any restriction on communication

or movement.

- section 144 or cr.p.c is not used for longer terms in the general public .
- Indefinite internet shutdowns are unconstitutional.
- Freedom of press must be preserved even during a security crisis.

Table:- judicial precedents establishing the link between internet shutdowns and fundamental rights in Anuradha Bhasin v. Union of India (2020)

<u>S.NO</u>	Case name and Citation	principle established	relevance to this case
1	Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (1995) 2 SCC 161	Recognized that the right to freedom of speech and expression includes the right to disseminate information through electronic media.	The Court relied on this precedent to affirm that freedom of expression extends to digital and online platforms, including the internet.
2	Shreya Singhal v. Union of India (2015) 5 SCC 1	Struck down Section 66A of the IT Act; held that online speech is protected under Article 19(1)(a) and can only be restricted on reasonable grounds under Article 19(2).	Used to reaffirm that expression through the internet is constitutionally protected, and restrictions must pass the test of reasonableness.
3	Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1985) 1 SCC 641	Upheld freedom of the press as an essential part of Article 19(1)(a)	Applied to argue that the shutdown restricted the functioning of journalists and the press, violating Article 19(1)(a).

4	K. S. Puttaswamy (Privacy-9J.) v. Union of India (2017) 10 SCC 1	Introduced the test of proportionality — any restriction on a fundamental right must be lawful, necessary, and proportionate.	The Court used this to test whether internet shutdowns and Section 144 orders were proportionate to the security concerns cited.
5	Babulal Parate v. State of Bombay AIR 1960 SC 51	Explained the preventive nature of Section 144 Cr.P.C. but warned against its misuse.	The Court used this to clarify that Section 144 cannot be imposed arbitrarily or indefinitely to curb citizens' freedoms.
6	Madhu Limaye v. Sub-Divisional Magistrate, Monghyr (1970) 3 SCC 746	Emphasized judicial scrutiny of Section 144 orders and the need for reasonable grounds.	Reinforced the need for specific, fact-based justification for restrictions under Section 144.
7	Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana (1988) 3 SCC 410	Recognized the right to broadcast or exhibit content as part of free expression.	Supported the view that access to communication platforms (like the internet) is part of Article 19(1)(a).
8	Ram Jethmalani v. Union of India (2011) 8 SCC 1	Affirmed the citizen's right to information as part of Article 19(1)(a)	Cited to hold that government orders restricting rights must be published secrecy violates constitutional transparency

Conclusion:-

The Anuradha Bhasin v. Union of India judgment is a watershed moment in India's constitutional and cyber rights law. It was the first time that the Supreme Court of India clearly held that freedom of speech and expression and the right to trade or business via the internet fall within the ambit of Articles 19(1)(a) and 19(1)(g) of the Constitution. Applying the tests of legality, necessity, and proportionality, the Court set definite constitutional limits on the government's authority to undertake internet shutdowns and restrictions of movement.

The Court's emphasis on openness in the form of publication of orders, regular examination of restrictions, and ban on indefinite shutdowns reasserted the judiciary as the protector of constitutional rights in the age of the internet. Although the Court avoided direct declaration of invalidity of the restrictions ordered in Jammu and Kashmir, it established principles that would ensure abuse of executive authority under the umbrella of national security could be avoided in the future.

This case therefore reinterpreted the tension between state security and individual freedom, asserting that constitutional freedoms could not be indefinitely suspended, even in exceptional circumstances. It also brought to the fore the increasing significance of internet connectivity as a driver of democratic engagement, freedom of the press, and economic enterprise in present-day India.

Finally, Anuradha Bhasin reaffirms that security cannot override liberty in a democracy based on the rule of law and that every limitation on rights must be justified by the State with accountability and transparency.

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