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CASE COMMENT ON INTERNET SHUTDOWN AND THE ANURADHA CASE

AUTHORED BY - SUDHANVA

4TH YEAR JINDAL GLOBAL LAW SCHOOL

In a democracy the least that is expected from the government is not to exploit the loopholes in their very own laws, to suppress the voices of their own citizens, or make their livelihood inaccessible to them. India has recorded the highest number of internet shutdowns, particularly at times and stages when people have tried to criticize and question the government. The government paints these acts as a threat of mobilisation or security concerns (which may indeed have been the case in few circumstance but quite of often the cover for the government) to impose upon its people a blanket shutdown of the internet. Indeed, the internet does facilitate the non-state elements in conspiring and execution of their missions, but then why has the government without supervision attempted and promoted to digitalise the lives of its citizens on the very platform. Thus, at the end of the day when the government is not equipped with the means to curb the threat of the non-state elements it can only resort to a complete restriction of the internet, leaving its citizens with no alternatives.

The legislature and the administrative prior to any valid and explicit laws for restricting the internet, had erroneously brought it under the ambit of section 144 of the CrPC. This statute had become a play tool since the section is essentially confers the government to take all measures in situations when there has been a threat to the society and law. What is more saddening is that the Judiciary too had validate this practice in the case of *Gaurav Sureshbhai Vyas v. State of Gujarat* giving permission to the government extra-discretion and excessive power. It is only until the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 where in it could actually be said that any power to restrict the internet was explicitly conferred upon the government.

This law has been particularly abused in the previous state of Jammu and Kashmir time and again, when the government had placed blanket bans over the internet for huge period of time unreasonably and even without any warranted laws. When these irregularities had finally reached the doorsteps of the Court in the matter of *Anuradha Bhasin v. Union of India*, it could be said that the Honourable

Court has rather provided an unjust verdict and evaded from performing a complete investigation and analysis of the matter. The reasoning for the disappointment is that firstly, that the Court has not evaluated the position whether the access to Internet is a fundamental right or not, it has rather addressed only whether a certain narrowed utilities of the internet would constitute a fundamental right. Secondly, while the court was tasked in actually measuring the proportionality of the restriction to the fundamental right, it has spoken volumes of the importance of the doctrine but not at a single instance actually weighed the restriction against the right. Thirdly, while the court was supposed to be the ultimate reviewer of such unreasonable orders, it has failed to take any assertive action in ruling against the arbitrary internet shutdown orders, rather has gently brushed away the matter to a committee-based introspection.

In the judgement the court takes us through the developments and jurisprudence of the Court in acceptance the various mediums created for the serving the freedom of speech and profession under Article 19 (1) (a) and (g) including the internet in this particular case. It is to be noted that when they exclude having access to the internet as a fundamental right, then it could only mean that only if the internet is being used for the purpose of free speech or profession is it granted as a fundamental right, it does not account for any other use of the internet for instance for educational purposes or banking or healthcare purposes. It is the utility of the internet in limited ways which can be fit into the definitions under the two clauses is the only way that it could be a fundamental right.

When the question of proportionality was raised, the court has evidently buried the issue under the carpet. Since, this was the biggest opportunity to verify whether a blanket shutdown of the internet is the only option whenever the government faces with a cyber threat or aggression. The court could have utilised it to question the existence of measures which could have been taken such surveillance of social media platforms, restriction on certain websites and etc among many other options. However, the court ended up gauging with the discrepancy in the meaning of a temporary shutdown, to which too the answer was not satisfying. The best the court was able to deliver was a review committee which would offer an evaluation directly to the government whether the period specified by them for such shutdowns were necessary or not.

Lastly, when the court have all the discretionary power to grant and create any legal remedy for the citizens, even after recognising the numerous fallacies in the narrative of the Government, the Court

refrained from taking any affirmative measures in rectifying the unreasonable restrictions. It had come to some suggestive conclusions such as the government should likely consider allowing access to e-banking sites, government websites and directing them to review the current restrictions.

Thus, the court have essentially fortified the powers of the government to place blanket restriction on the Internet for temporary periods rather than bringing down the crises of the internet shutdowns. As the court although find the utility of the internet for the free speech and carrying out their profession, the courts have found such restriction to be brought under Article 19 (2) of the constitution reasonable. The new laws has only changed the statute name and the section to implement such an unreasonable restriction while the motive and powers are not being questioned for any checks and measures like the court which has remained silent over the matter. It wouldn't be a surprise to continue see that India is still the country with the largest internet shutdowns.

