



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

AN ANALYSIS ON THE TERMINATION OF TELECOM SERVICES IN STATE OF JAMMU & KASHMIR WHILST THE ABROGATION OF ARTICLE 370

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Hypothesis:

A research issue must be interesting to the researcher, and the researcher must be engaged in finding the solution, according to eminent authors. With the development of society and the growth of the population, there has been a strong demand for the protection of civil liberties and the interests of individuals, which is the responsibility of the government. This empirical study elaborates on the situation in Jammu and Kashmir as Article 370 is repealed on August 4th, 2019. In this research paper, the author will focus on the state's situation in relation to trade and commerce barriers, social trauma, psychological anguish, adherence to the doctrine of proportionality by the authorities, and the elimination of telecom services. The author also discusses trade and commerce barriers, social trauma, psychological anguish, and social trauma. The central argument of this study centres on the infringement of fundamental rights that each person has and those are also guaranteed by the Indian Constitution. Even though unrest is frequently observed and experienced in Jammu and Kashmir, its effects are harmful to society as a whole. In this study, the author will focus on the effects of the ramifications that the locals were afraid of, which had a negative impact on their ability to support themselves.

Research Questionnaire:

- 1) What were the effects of stopping telecom services for 282 days in Jammu and Kashmir, and what are the ramifications of continuing similar practises today?
- 2) Did the state's internet censorship measures adhere to the Doctrine of Proportionality?
- 3) What were the concrete repercussions that the state's kids had to deal with?

Scope And Limitation:

The time period covered by the research and the questionnaire is only up to the point at which the government first asserted its claim to the freedom of speech, access to the internet, freedom of movement, right to an education, right to a life of dignity, and right to practise any profession. The phrase "livelihood" is restricted to employment, trade (any company), and education. The phrase "psychological trauma" only refers to the locals' mental health. The phrase "Youth" refers to people who are under the age of 18.

Objective:

The goal of this essay is to close legal gaps that are detrimental to a person's wellbeing, and it doesn't contain any criticism of any authorities or people. This essay will show how the state's daily operations were impacted by the termination of the telecom services. This essay will also place focus on the doctrine of proportionality's adherence. The main goal of this essay is to summarise a framework that might be used to prevent violations of fundamental human rights or natural rights.

Research Methodology:

The author used a doctrinal, non-doctrinal, and empirical research technique. The provisions of the legislation, court decisions, news items, and international treaties will be heavily stressed by the author. Since he is a native of the region, the author has engaged in empirical research to add depth and meaning to the study's findings.

Background and History:

There isn't much new information in this report for educated observers of Jammu and Kashmir or its many residents. But a lot of information that may be well known, particularly in the valley, is not well known throughout the rest of India. We think the general population in India will be aware of the severity of human rights abuses in this state. A large section of the Indian state's population and its own elected officials, who are regarded as agents of the Indian state, alienated a significant portion of the population, it is obvious to any objective observer that the Jammu and Kashmir uprising was the outcome. Jammu & Kashmir, as is well known, joined the Indian Union in 1947 under highly unique circumstances when Maharaja Hari Singh was captured by tribal

looters as a result of the invasion supported by Pakistan. Maharaja required the assistance of the Indian army to combat them. Despite playing a key role in convincing the Kashmiris to join India, Sheikh Abdullah was imprisoned by the wary Indian government from 1953 to 1975 until the 2005 Indira-Sheikh Agreement. 1975. The Kashmiri people received the most of the autonomy in the meantime. Successive Coalition governments actively undermined states under Article 370 of the 1952 amendment to the Indian Constitution by utilising elected compliant governments in generally regarded rigged elections to promote the ruling party. The majority of the Kashmir issue's corrective actions were administrative¹. The major objective of Kashmiri politics continues to be the state's unification with India. The psychosocial characteristics and ambitions of Kashmiri communities have not previously been highlighted in Kashmiri politics. The importance of national integration has always taken precedence over the regional component of the state and the diverse aspirations of the sub-region. This exacerbated anti-Indian prejudice and further alienated the valley's populace. The 1987 elections are regarded as the turning point that sparked a significant revolt in the valley in 1989, even though Pakistan has continued to assist separatist forces in Kashmir since 1947. The Muslim United Front, a coalition of parties, has presented a significant threat to the National Conference, which is now in power. In an election that was reportedly rigged by the National Conference [NC], MUF lost in contrast to expectations and forecasts made by the general public. This exacerbated public resentment towards both the Coalition government and NC, the largest pro-India party, which presumably created the political and social foundation for the brutal insurgency that persisted to this day. According to some estimates, 60,000 people died as a result of the army, paramilitary units, police, and fighters who had surrendered engaging in insurgency and counter insurgency operations. Human rights violations are a direct result of this brutal and occasionally brotherly fighting. The Armed Forces (Special Powers) Act 1958 as amended in 1972 is the primary statute governing military action in Jammu and Kashmir. The measure, according to human rights groups, is unlawful and goes against international humanitarian law. The Supreme Court maintained the statute, as it did in the TADA case², but offered specific instructions for how to apply it in light of potential human rights breaches. Nevertheless, we consider it to be a "illegal law" that goes against both domestic and international law. The term "disturbed area" is not specifically defined by law. The state governor or federal government has the authority to designate a region as a "disturbed area" under Section 3. Such a state of emergency needs to be a temporary solution and cannot persist for decades, as

¹ <https://www.outlookindia.com/website/story/human-rights-violations-in-jammu-kashmir-a-report/211099>

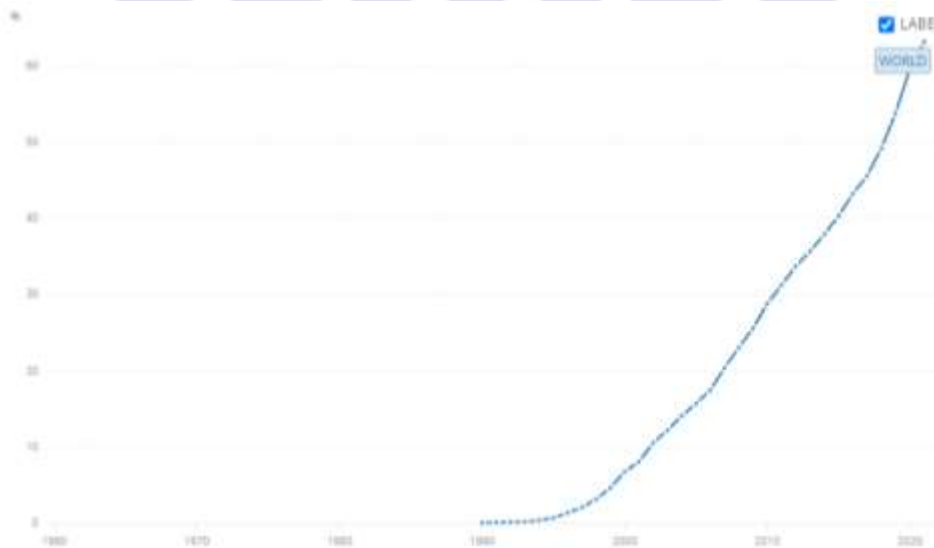
² Shaheen Welfare Association vs Union Of India & Ors 1996 SCC (2) 616

one UN expert on human rights has noted. The Convention's Article 6(1)³, which among other things declares that "No one shall be arbitrarily deprived of his life," is broken by this. Once India has ratified the Convention, its provisions may even take precedence over the Constitution under international law. In other words, the Armed Forces Special Powers Act⁴ cannot be considered legal and valid on the basis that it is constitutional, even if it violates the Convention. Either way, human rights activists always say that the law also violates the Constitution. Like TADA, it transgresses the fundamental rights articles 14 and 21.

1st Research Questionnaire:

1) What were the effects of stopping telecom services for 552 days in Jammu and Kashmir, and what are the ramifications of continuing similar practises today?

We now live in a world where the internet is crucial to meeting all of humanity's requirements. In the modern period, the internet and other connected services are used by 60%⁵ of the world's population.



According to the aforementioned graph, 60% of the world's population relies on the Internet for jobs, trade, and education. The Charter of Human Rights and Principles for the Internet, which was published by the Internet Governance Forum, a subsidiary of the United Nations, and the Internet Rights & Principles Dynamic Coalition, an international network of people and organisations working to uphold human rights in the online environment and in all areas of Internet

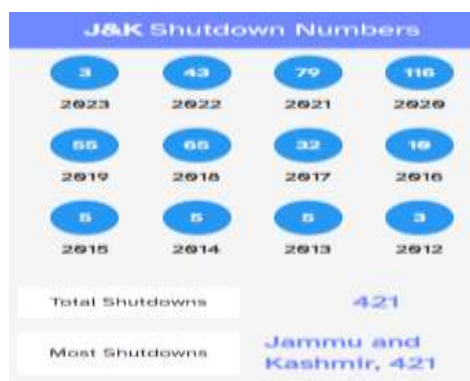
³ <https://research.un.org/en/udhr70/6>
11#:~:text=Article%206%20of%20the%20UDHR,refugees%2C%20or%20any%20other%20group.
⁴ https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf
⁵ <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2021&start=1960&view=chart>

policing, also recognise the Internet as a right entitlement. Every person has a right to access the Internet, according to the Charter. The Internet, which is becoming more and more significant in our daily lives, provides hitherto unheard-of prospects for the achievement of human rights. Therefore, it is essential that all actors, public and private, respect and defend human rights online. Additionally, measures must be implemented to guarantee that as the Internet grows and develops, it does so in a way that fully upholds human rights. The 10 Rights and Principles⁶ are intended to help realise this vision of a rights-based Internet environment:

1. Universality and equality
2. Rights and social justice
3. Accessibility
4. Expression and association
5. Privacy and data protection
6. Life, liberty, and security
7. Diversity
8. Network equality
9. Standards and regulation
10. Governance

In the case of *Anuradha Bhasin v. Union of India*⁷, which is covered by Article 21 of the Indian Constitution, the Supreme Court of India intervened while the residents of the state of Jammu & Kashmir were being denied access to these internet rights. However, the question at hand is whether internet shutdowns are still common in 2019 despite this recognition.

A report by internet shutdowns claims that the state has seen a total of 241 internet outages⁸, which have disrupted locals' daily lives.



6

<https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/Communications/InternetPrinciplesAndRightsCoalition.pdf>

⁷Anuradha Bhasin v. Union of India 2019 SCC OnLine SC 1725

⁸ <https://internetshutdowns.in/static-page/jammu-kashmir/>

These shutdowns have hurt the state's economy by encouraging barriers to trade, e-commerce, and all other sectors of commerce.

The freedom to conduct business is acknowledged as a fundamental right under Article 19(1)(g) of the Indian Constitution. Telecommunications services being eliminated has led to commercial practises that are against this law. Although it was determined in the instance of that the authorities have the power to impose reasonable restrictions that are for the better interest of the general public and was held in the case of The provisions of the Bombay Municipal Corporations Act of 1888⁹ were challenged in *Bombay Hawkers Union v. Bombay Municipal Corporation*¹⁰ before the Supreme Court on the grounds that the authorities had the arbitrary power to grant or deny permits to street vendors and to evict unlicensed peddlers without giving them a chance to be heard. The Supreme Court disagreed with this claim, finding that public roadways are by definition established for the benefit of the general public. Nobody has the fundamental right to engage in behaviour that irks, harms, or inflicts hardship on the general populace. Therefore, it is assumed that the BMC Act's provisions are not in conflict with Section 19(1)(g) of the Constitution and are of a reasonably restricted nature in the public interest. The entire business class in the state of Jammu and Kashmir has been forbidden from conducting business that could otherwise be done using electronic means without disturbing the public and could be done on an electronic platform in the form of marketing, digital, entrepreneurship, etc.

The following are the main issues that the suspension of internet services in Jammu and Kashmir has caused for business owners¹¹:

1. Unable to send required paperwork.
2. Impossible to use online services.

⁹ <https://lj.maharashtra.gov.in/Site/Upload/Acts/H-4094%20The%20Mumbai%20Municipal%20Corporation%20Act.pdf>

¹⁰ <https://www.legalservicesindia.com/article/2272/Freedom-of-Business,-Trade-and-Profession.html>

¹¹ TY - JOUR

AU - Qadir, Shahid

AU - Dar, Amir

PY - 2021/07/01

SP - 109

EP - 116

T1 - How Internet Shutdowns Affects the Entrepreneurs in Jammu and Kashmir

VL - 12

DO - 10.4018/IJABIM.20210701.0a7

JO - International Journal of Asian Business and Information Management

ER -

3. The difficulty in locating the required data.
4. The inability to transfer money online.
5. A decline in clientele.
6. The loss of jobs, labourers, or employees.

Figure 1. Shows the firms effected by shutdown of internet services in Jammu and Kashmir



2nd Research Questionnaire:

Did the state's internet censorship measures adhere to the Doctrine of Proportionality?

The doctrine of proportionality¹² is applied during the judicial review phase of administrative law. According to the principle, there must be a logical connection between the desired result and the actions required to get there. The action may subsequently be contested through judicial review if it does not completely violate the court's conscience. An example will enable you to understand it better. The punishment must be appropriate, meaning that the employer can treat it as unpaid leave and issue a warning or even a fine but not pay one if there are still missing workers at the job forever let go service will be disproportionate. According to Sir John Laws, courts are interested in how decision-makers have prioritised "compatibility" as a principle. The proportions idea has European roots. One of the most significant legal elements of "European administrative law" penetrates all of European administrative law. The Wednesbury concept of reasonableness, which outlines the minimal standard of reasonableness that public bodies must adhere to in their decisions, has long been seen as a component of the principle of proportionality in the UK. According to him, any decision that is so stupid that no rational expert could make it should be held accountable for and scrapped by judicial review. The Wednesbury principle addressed the proportionality notion, but from a judicial standpoint, the courts have seen judicial intervention

¹² <https://www.legalserviceindia.com/legal/article-3517-critical-analysis-of-doctrine-of-proportionality.html>

differently. The withholding principle entails carefully weighing the plausibility of a claim. In other words, for this theory to be used, there must be a balance between benefits and harms in the outcomes of managerial actions in addition to rational decision-making. As a result, when compared to the "reasonability" test, the "compatibility" test has a larger and broader impact on the scope of judicial review. Furthermore, the Court considers both the public and private interests in the case while applying the proportionality principle, although this is not done when using *Wednesbury's* principle of unreasonableness.

The *Omkumar V. Union of India*¹³ judgement by the Supreme Court, The Supreme Court approved the proportionality doctrine's use in India in this particular case. The Supreme Court's surprise discovery in that instance, however, that Indian courts have consistently adopted the proportionality theory since 1950 when addressing the legality of acts seems unusual. motion. The laws that infringe the fundamental liberties outlined in Section 19(1) of the Indian Constitution are dealt with by the legislature. The Indian courts have had plenty of chances to evaluate whether the limits are appropriate for the circumstances and the least restrictive measures are taken, according to the Supreme Court.

The same holds true for laws that contravene Articles 14 and 21 of the Indian Constitution. The Supreme Court came to the same judgement regarding the application of the idea of proportionality in administrative action in India after closely reviewing the circumstance in England. Although it was not mentioned expressly, the Supreme Court noted that administrative acts in India that impact basic freedoms (Articles 19 and 21) were frequently contested for lack of proportionality. It is obvious that the proportionality principle was used in this situation. The Court adamantly maintains that the idea of proportionality is applicable to judicial review of administrative conduct that violates Articles 19 and 21 of the Indian Constitution. In *Anuradha Bhasin v. Union of India*¹⁴, where the top court defined five problems, the limits are similarly disproportionately implemented in the State of Jammu and Kashmir:

1. Is the government immune from having to produce all restriction orders?
2. Do the Constitution's Articles 19(1)(a) and 19(1)(g) protect the freedoms of speech, expression, and the right to engage in any profession or carry on any occupation, trade, or commerce through the Internet?

¹³ *Omkumar Vs. Union of India* (2001 (2) SCC 386

¹⁴ *Anuradha Bhasin v. Union of India* 2019 SCC OnLine SC 1725

3. Is the government's decision to forbid internet use legal?
4. Was it legal to impose movement limitations in accordance with Section 144 of the Code of Criminal Procedure?
5. Were the limits a violation of the petitioner's right to freedom of the press under W.P. (C) No. 1031 of 2019?

So far, we are only concerned with issue number 2 and 3:

Issue 2nd: First, the Court maintained that the Internet is covered by the right to free speech enshrined in Article 19 of the Indian Constitution. The court overturned its case law that had protected novel forms of expression. The Supreme Court ruled in *Indian Express v. Union of India*¹⁵ that the freedom of the press in writing is protected by the right to freedom of expression. The right of citizens to watch films is viewed as a component of a fundamental right to freedom of speech in *Odyssey Communications Pvt. Ltd. vs. Lokvidayan Sanghatana*¹⁶. The freedom of speech and expression provided by Article 19 must be practised online because it has become one of the primary channels for the dissemination of information. However, this freedom may be constrained by Article 19(2) of the Constitution. As a result, the Internet is also essential for trade and commerce, and some companies have become totally reliant on it. Therefore, clause 19(1)(g) of the Constitution also guarantees the freedom of business and the commercial use of the Internet, subject to the restrictions outlined in section 19(6). Since neither side in the case made this claim, the Court refrained from declaring Internet access to be a fundamental right. After that, the Court will decide if and how much freedom of expression may be limited. Article 19(2) of the Indian Constitution gives the government the authority to impose restrictions on freedom of expression as long as they are legal, reasonable, and used for legitimate ends. A comprehensive list of justifiable restrictions is outlined in the Constitution, including "interests in sovereignty, integrity, security, friendly relations with foreign countries, public order, decency or morality, ethics or contempt of court, defamation or incitement to commit a crime." The Court discovered that restrictions on the right to free speech and expression could result in outright prohibitions after analysing its case law on the interpretation of Article 19(2). In certain circumstances, a total prohibition shouldn't unnecessarily restrict the right to free speech, and the government should explain why less restrictive alternatives are inappropriate. Ultimately, depending on the specifics of each case, the Court will decide whether a restriction results in an absolute injunction. The

¹⁵ *Indian Express v. Union of India*, (1985) 1 SCC 641

¹⁶ *Odyssey Communications Pvt. Ltd. vs. Lokvidayan Sanghatana*, (1988) 3 SCC 410

geopolitical setting of the limits was then discussed by the Court. agrees with the government that terrorism has long been a problem in Jammu and Kashmir. The court observed that contemporary terrorists mainly rely on the internet, which enables them to disseminate propaganda and false information, generate money, and enlist others in their cause. Therefore, the Indian government has stated that in order to "combat terrorism in its infancy," restrictions must be imposed. The Court ruled that the "war on terror" could not be classified as a scenario creating public disturbance because it was distinct from territorial disputes and evolving into various forms that influence daily life. The Court came to the conclusion that speech inciting impending violence was not protected by the First Amendment of the United States¹⁷ after reviewing its case law dating back to 1863. The court drew attention to the fact that the courts and US president have regularly curtailed free speech in the name of national security. The first case involves *Vallandigham*¹⁸, who was jailed and convicted in 1863 for publicly calling him "evil, wicked, evil." and superfluous. Justice Holmes stated in *Abrams v. United States*¹⁹ that the government of the United States has the authority to retaliate against speech that creates or is intended to create a clear and immediate danger, and that this authority is "certainly greater" during wartime than it is during peacetime because war opens up dangers that do not exist at other times. In *Brandenburg v. Ohio*²⁰, the U.S. Supreme Court ruled that supporters of illegal behaviour could only be punished by states if they aim to or have the ability to encourage "imminent anarchic action." Finally, the Court of India reaffirmed that US Attorney General Ashcroft chastised anyone who questioned the erosion of fundamental rights as a result of the war on terror in the post-9/11 setting. To be more specific, "Your actions only encourage terrorists, when they do erode our national unity and weaken our determination. To those who frighten peace-loving people with the spectre of losing their freedom, my message is this. They provide America's adversaries ammunition. The court cited the recent case *Modern Dental College & Research Centre v. interdependence*²¹ of all rights, and thus they can be restricted. In that ruling, the Court further discovered that when fundamental rights are in conflict, they must be weighed against one another such that "they harmoniously coexist with one another.

¹⁷ <https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/#:~:text=The%20First%20Amendment%20provides%20that,the%20right%20to%20bear%20arms.>

¹⁸ *Vallandigham* 28 F. Cas. 874 (1863)

¹⁹ *Abrams v. United States*, 250 U.S. 616 (1919)

²⁰ *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

²¹ <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/#:~:text=The%20Supreme%20Court%20of%20India,tests%20of%20necessity%20and%20proportionality.>

Similar to the First Amendment, the Indian Constitution permits the government to impose restrictions on free expression, but the restrictions must be proportionate. To guarantee that a right is not reduced more than is necessary, the Court emphasised the need for the proportionality criteria. The Court rejected the premise that a government should be prevented from pursuing the public good at the expense of public interests and was cautious about striking a balance between national security and liberty. standard rights. The Court defines proportionality in this vein as the determination of whether "to regulate the exercise of fundamental rights, the choice of the most suitable or least restrictive measure has been introduced by the legislator or administrator to achieve the subject matter of the law" or the subject of an administrative order, as the case may be. The Supreme Court then performed a thorough comparative analysis of the Canadian, German, and Indian courts' sufficiency standards. Despite widespread agreement that proportionality is a crucial instrument for establishing judicial balance when addressing situations that restrict basic rights, it is discovered that there is no consensus about the idea that symmetry and balance are comparable. The Court then explained how it interpreted the sufficiency test:

1. The restriction's objective must be justifiable.
2. The limitation must be required.
3. The authorities must decide if there are any alternatives to the restriction.
4. The least restrictive option should be used.
5. A court must be able to review the restriction.

The court further stated that its territorial and temporal limits and scope must be tied to what is required to address an emergent situation. The idea of proportionality necessitates a restriction that is adapted to the level of restriction, the duration of the emergency, the nature of the emergency, and the type of restriction²².

Issue 3rd: The Court then reviewed limitations on freedom of expression online after introducing the concepts of proportionality and reasonable restrictions. He categorically rejects the state's reasoning for outright prohibiting internet access because he lacks the tools to do so and because embracing this logic would make the state want to outlaw internet access entirely at all times. However, the Court acknowledged that there was "great merit in the government's assertion that the Internet could be used to spread terrorism, thereby challenging India's sovereignty and

²² <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/#:~:text=The%20Supreme%20Court%20of%20India,tests%20of%20necessity%20and%20proportionality.>

integrity" and that it should therefore assess how much the restriction affects the right to free speech. The Court emphasised that in determining whether an Internet shutdown is legitimate, it must take into account both procedural and substantive concerns. The procedural mechanism is composed of two parts. Contracts between Internet service providers and the government are the first. The second item of law is one that is governed by the Indian Telegraph Act of 1885²³, The Code of Criminal Procedure of 1973²⁴, and the Information Technology Act of 2000²⁵. The Court primarily focused on the latter case in its consideration because it was immediately relevant to the current case. The government may limit telecommunications services, including internet access, under suspension rules passed in 2017 under section 7 of the Telegraph Act, subject to specific safeguards. The first of these safeguards is a suspension order, which can only be issued by the Minister of the Government of India in charge of the Department of Home Affairs or the Minister of State Government. In unavoidable situations, another government official who is not the Chief Secretary of India may issue an order as long as the appropriate authority accepts it within 24 hours since broadcast. The suspension must be lifted within 24 hours if it is rejected. The reason for the suspension must be specified in the orders, and a copy of the order must be sent to a review committee made up of senior state authorities. The justifications must not only detail why the suspension is necessary, but also the "inevitable" circumstance that calls for the order. Additionally, the Telegraphic Act's Section 5(2) only enables suspension orders in the event of a public emergency or for the sake of public safety. The Court came to the conclusion that the government must first decide that a public emergency exists and not any other circumstance in order to give a temporary suspension. Although the Telegraphic Act does not define the term "public emergency," it is obvious from its use in conjunction with the phrase "in the interest of benefits to public safety" that the meaning can be inferred. The Supreme Court observed that different people define emergencies differently. For instance, Article 4 of the International Covenant on Civil and Political Rights²⁶ states that a public emergency must be formally declared if it endangers the State's existence. Article 15 of the European Convention on Human Rights²⁷, which states: In times of war or other public emergency endangering the survival of the nation, also uses similar language. A "public emergency" must be of a serious character, we can only emphasise this. Although the disclosure of government orders is a well-established legal and

²³ <https://dot.gov.in/act-rules-content/2430>

²⁴ <https://www.mha.gov.in/sites/default/files/2022-09/ccp1973%5B1%5D.pdf>

²⁵ <https://www.meity.gov.in/content/information-technology-act-2000-0>

²⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²⁷ https://www.echr.coe.int/documents/convention_eng.pdf

natural justice concept, the Court notes that the suspension regulations do not provide provisions for this. if the decree has an impact on someone's life, liberty, or property. The offended party has a constitutional right to protest suspension orders, according to the court's reiteration of Article 226 of the Indian Constitution. The Court once more maintained that, if required, "stopping the provision of telecommunications services, including the Internet or not, is an extreme step, only contemplated by the State when it is deemed "necessary" and "inevitable." To that purpose, the state must determine whether there are any other less drastic remedies available. The Suspension Rules don't define a limit, the Court pointed out that the suspension rules do not specify maximum length of the suspension. However, the Court determined that an indefinite suspension was undesirable after taking the principle of proportionality into account. The Court ruled that as the suspension regulations do not outline an acceptable closing period, the review committee should set the deadline and make sure it does not exceed the required amount of time. Eight orders have been presented to the court by the state. The Inspector General of Police has authorised four, and the government of Jammu and Kashmir has accepted the remaining four. The attorney general said that while some limits are being relaxed, the government is nevertheless continuously evaluating the issue. The court acknowledged that the threat to public safety could not be disregarded, but it made clear that any additional limits would need to be put in place in accordance with a fresh order. Since the Court was unable to analyse the public order situation or view all orders to determine which ones were no longer in force, it "moulded the relief in the operative portion." We can infer from the aforementioned statistics that internet shutdowns are only partially and not completely unavoidable²⁸.

3rd Research Questionnaire:

What were the implications specifically faced by the youth of the state?

The youth of the state were deprived of their right to pursue education because of the relentless restrictions and internet shutdowns. When it comes to an individual's complete development, education is of the utmost importance. In the 1992 case of *Mohini Jain v. State of Karnataka*²⁹, the Supreme Court of India upheld the state of Karnataka's right to charge students admitted to the state above the "government seat quota" exorbitant tuition fees at private medical colleges in the state. An prospective medical student named Mohini Jain petitioned the Supreme Court to object

²⁸ <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/#:~:text=The%20Supreme%20Court%20of%20India,tests%20of%20necessity%20and%20proportionality.>

²⁹ *Mohini Jain v. State of Karnataka* 1992 AIR 1858

to the declaration. "Is the right to education guaranteed to Indian citizens under the Constitution of India?" the Supreme Court asked as a crucial question. Although they are not explicitly listed in Part III of the Constitution, the Supreme Court of India has determined that the phrase "personal life and liberties" in Article 21 of the Constitution implicitly implies a number of other rights that are crucial for the complete development of human beings. of personality. The right to education is protected by Article 21 of the Constitution since it is one of the things that contributes to an individual's overall development. The court must now respond to the following important inquiries:

- a) Does the Indian Constitution provide the "right to education" for all citizens?
- b) Will the use of a fixed rate tariff violate the people's constitutional right to education if the right is guaranteed?
- c) Does the capitation of tuition costs at educational institutions violate Article 14 of the Indian Constitution, which states that "The State shall not deny the equal rights of any person before laws or laws of equal protection in the territory of India"?

The court ruled that it is never acceptable for human dignity to be infringed and that it is the duty of the state to uphold and defend the dignity of its inhabitants. The only way to ensure that people have human dignity is to develop their character, which can only be done by educating them. 70% of the populace was illiterate when the Constitution was written and ratified in 1950. In ten years, the constitution's authors planned to have 100% of the population literate. Articles 41 "The State shall take effective measures to secure the right to work, education and social assistance within the limits of its economic capabilities and development, in case of unemployment, old age, sickness, or injury, or in other cases of poverty" and Article 45 "The State shall endeavour to ensure, within ten years of the effective date of this Constitution, compulsory and free education for all children up to the age of four" are motivated by this hope. The Court cited many sections of the Indian Constitution and reaffirmed that its preamble guarantees "justice, social, economic, and political" as well as "freedom of thought, expression, belief, faith, and worship" to all Indian citizens. Additionally, it ensures "equal status and opportunity" as well as personal dignity. If the citizens of this nation are not educated, the goals from the opening that are written on paper cannot be realised. The Court ruled that even though Part III of the Indian Constitution does not explicitly recognise the right to an education as a fundamental right, the combination of Article 21 from Part III and Articles 38, 39(a), (f), 41, and 45 from Part IV of the Indian Constitution shows that the Constitution's authors intended for the state to be obligated to provide education to its citizens. According to Article 21, "No person shall be deprived of his life or personal liberty except in

accordance with due process of law." Article 21 guarantees the right to life, and the right to education is a requirement for the right to dignity to also be upheld. Therefore, the state is required to offer educational facilities at all levels for the benefit of all citizens because every person has a fundamental right to education. The right to an education must be protected in all state-owned or accredited educational institutions. The Constitution's Part IV, Guiding Principles of State Policy, states that in order to advance citizen welfare, the State must maintain social order and reduce inequality. Part IV's Articles 38 and 39 are meant to serve as a framework for government programmes that ensure individuals have sufficient means of subsistence and give children the chance to grow up healthy and completely. If the right to education outlined in Article 41 is not made available to all citizens, then the actuality of fundamental rights under Part III will not be exercised by illiterate citizens. As a result, the fundamental rights guaranteed in Part III of the Constitution go hand in hand with the right to education. Only if citizens are informed and conscious of their own dignity will they be able to fully enjoy and execute the fundamental rights provided in Part III of the Constitution, including freedom of speech and expression as well as other rights under Article 19. The way to alleviate inequality and guarantee acceptable living conditions is through education. People who are illiterate are vulnerable to abuse. The vision reflected in the Constitutional provisions cannot be realised without education. The Court determined that Part III's fundamental rights were inseparable from the guiding principles that were essential to the nation's governance. They should be viewed as essential rights since they complement one another. There is no such rule derived from the law of the country that stresses that if a state is in disturbance, one must be restricted from pursuing education. However, while the internet shutdowns by the state's officials were in effect, it is a blatant infringement of this right. Numerous internet outages that the valley has previously experienced have had a severe effect on the educational system. By considering technology to be a tool for advancing other rights, the Supreme Court itself has emphasised the significance of technology in the twenty-first century. The government must consider how its educational policies will affect people's lives over the long term when it develops these crucial initiatives. Remember that even in a society experiencing political and social upheaval, education can be a strong tool for advancing equality and peace. The government must make sure that education continues uninterrupted because it is crucial for people to be informed and aware of their surroundings since education has the power to instill a sense of empowerment and knowledge. Knowledge can aid humanity in successfully overcoming such challenges. times of difficulty. The way people interact, in particular, has undergone a total transformation thanks to the internet. The primary method for disseminating knowledge in the

modern day is the Internet. Its user base and resource availability are both expanding daily. The aggressive measures taken by governments in various nations to control the Internet also show that "the democratic potential of the Internet is stifling." Legislation, censorship, and blocking techniques are frequently used to impose restrictions and controls on Internet material due to many factors, including "political, social, commercial, national security, and cultural interests." The Kashmir Valley occasionally experiences internet outages. However, the people of Kashmir experienced the longest internet blackout in history, lasting 282 days from August 4, 2019, to May 12, 2020. Between 2012 and 2017, Kashmir had the most internet disruptions, followed by Rajasthan, Haryana, and Gujarat. On the evening of August 4, 2019, Kashmir's internet service was shut down. On August 5, 2019, the Indian government abolished the state of Jammu and Kashmir's (J&K) special status under Articles 370 and 35A. Union Territories of J&K and Ladakh are separated from the state. A government-imposed curfew, restricted communications networks, including internet, cable TV, landlines, and mobile services, and the closure of all educational institutions were all implemented to prevent unrest over the decision, particularly in Kashmir. The Indian constitution protects both the freedom of thought and expression as well as the freedom to conduct business online. Internet censorship amounts to a violation of fundamental human rights. Every aspect of life is being impacted by the internet blackout, particularly Kashmir's corporate and educational sectors. Government workers and entrepreneurs completing income and goods and services tax (GST) returns are impacted by the internet suspension. The pace of development is directly impacted when e-procurement stops in Kashmir. Driver's licence applications from individuals and submissions of vehicle insurance and eligibility from providers are not permitted online. Passengers on local trains in Kashmir are unable to access the National Train Information Investigation System to look up local train schedules online. The Postal Service's wide range of services, including "reservation of registered mail, parcels and counterfeit items, money transfers, insurance packages, express mailers, savings certificates and cash banks, phone payments, money transfers, and more," are all impacted by the Internet blackout. Banking operations were also severely impacted. People who pay their energy bills online are currently paying them at the relevant locations, which causes long lines and prevents other mental diseases from being treated online. Patient is unable to confirm online claims that samples were shipped out of state for examination. The majority of patient data is not digitalized in hospitals in Kashmir. Doctors are unable to refresh themselves with new information. Save the Heart and J&K Blood Donors, two online medical support networks, have been shut down. Under the Ayushman Bharat online healthcare programme, poor patients in Kashmir are ineligible for free care. All private industries

and enterprises in Kashmir were forced to close due to political instability, frequent strikes, and internet service outages, which ultimately had a devastating effect on the region's economy. Kashmir. A thousand people lose their employment each day, and Kashmir's daily economy loses roughly Rs. 165 crore. Without the Internet, total industrial output declines by 70%, and particular industries such as agriculture, handicrafts, and the Kashmiri bat industry see a 50–60% decline in exports. When compared to the same time over the previous five years, the tourism sector which is regarded as the primary driver of Kashmir's economy recorded the lowest number of visitors to the valley from August to November 2019 at 36,105. Internet censorship hurts e-commerce. Prior to the internet censorship, Kashmir received between 3,000 and 5,000 online shopping items each day. Owners of e-commerce businesses do their business on a variety of websites and social media channels. Due to unpaid annual subscription fees, several websites have vanished from the internet. Education and research in Kashmir have collapsed as a result of the silent internet. Due to a scarcity of internet connection equipment, students must wait for a very long time outside internet cafes. Scholars from Kashmir have been unable to register online for national and international conferences or access academic resources. Additionally, they are unable to publish their research in publications or qualify for awards. However, some researchers have been able to relocate in order to continue and finish their work within a set amount of time. However, not every researcher can relocate in order to access the internet. Students' research and studies are being hampered by the inaccessibility of university and college e-library resources due to internet censorship.

Literature Review:

The Supreme Court of India's decisions in various instances, along with daily news, reports, publications, and international covenants, were used to broaden the author's interpretations of the emphasised parts of the Indian Constitution. The Indian Express The Indian Constitution, Perspective India reports from the World Bank, The Office of the High Commissioner for Human Rights, Internet shutdowns, Anuradha Bhasin v. Union of India, Legal Services India, Omkumar v. Union of India, International Expression Freedom Information and Technology Act, Telegraph Act, Code of Criminal Procedure of 1973, Columbia University, Jurist.org, In the cases of Modern Dental University & Research Centre v. State of Madhya Pradesh, Indian Express v. Union of India, Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, Dennis v. United States, Abrams v. United States, and Brandenburg v. Ohio, The Indian Telegraphic Act of 1885, the Information and Technology Act of 2000, and Shaheen Welfare Association v. Union of India,

Armed & Special Forces Act 1958, Universal Declaration Of Human Rights 1948, International Covenant on Civil and Political Rights 1966 and European Convention On Human Rights 1950.

Conclusion:

This study aims to address a number of important goals, with a particular emphasis on updating current laws, filling any gaps in the law, identifying administrative power restrictions, promoting the recognition of internet use as a fundamental right, and emphasising that rights shouldn't be permanently restricted. Additionally, it intends to demonstrate obedience to the law of proportionality, ensure the principle of *Suprema Lex*, and highlight the detrimental effects of cutting off telecom services. It also aims to throw light on the results of delayed telecom service. First of all, this research acknowledges the necessity of updating laws and rules to keep up with the quickly changing digital landscape. As technology develops, new difficulties and complications appear, necessitating the modification of legal frameworks. This study seeks to modernise the law in order to keep it current, functional, and capable of addressing new problems relating to internet usage and telecommunication services. Additionally, this study aims to close any legal gaps that might arise. It aims to pinpoint instances where laws may fall short or be insufficient in addressing the obligations and rights related to telecom services and internet use. Policymakers can improve legal safeguards and advance a more complete and inclusive regulatory framework by identifying these gaps and taking the necessary action. Finding and comprehending the restrictions on administrative power in regard to telecom services and internet use is another crucial goal. This requires assessing the power and latitude of administrative bodies and making sure that their decisions are supported by rules of law. This study tries to maintain accountability and avoid any abuses or arbitrary choices by defining the boundaries of administrative power. This report further emphasises that access to the internet is a fundamental right. It emphasises the need of addressing internet access as a basic requirement and encouraging fair and inexpensive access for everyone. By recognising internet access as a right, it is implied that any restrictions placed on it must be carefully considered and cannot be put in place arbitrarily or permanently. The report also clarifies the detrimental effects of cutting off telecom connections. It examines how such behaviours affect people, communities, and economies, highlighting the value of sustaining connectivity and the potential damage brought on by disruptions. Additionally, it draws attention to the negative effects of slow telecom service as well as the difficulties and restrictions that customers encounter while dealing with poor or inconsistent connectivity. The study aims to promote better infrastructure, service quality, and accessibility by highlighting these consequences

in order to ensure that users may fully benefit from digital technology. Additionally, the study tries to show compliance with the law of proportionality. According to this concept, any limitations on rights, such as those affecting internet access, must be reasonable in relation to the purposes that are being pursued. This study aims to verify that limits are justified and do not excessively infringe upon individual rights by assessing the proportionality of actions made by authorities. In this study, the Suprema Lex principle which states that the law is supreme is crucial. It emphasises that all decisions and activities regarding internet use and telecom services must adhere to current legal frameworks. The goal of the study is to encourage adherence to the rule of law by making sure that judgements are made in accordance with accepted legal standards rather than on whim or unfettered power. In conclusion, this research aims to update laws, fill in legal gaps, restrict administrative power, promote internet use as a right, highlight the detrimental effects of service interruptions, show proportionality, and ensure adherence to the Suprema Lex principle. Policymakers may create comprehensive and effective policies that safeguard individual rights and promote the expansion and advancement of digital technology by concentrating on these goals.

