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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



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: **PIONEERING PRESS FREEDOM IN THE** **DIGITAL AGE**

AUTHORED BY - UPANSHI GADA

Abstract

The case law '*Anuradha Bhasin v. Union of India*' was a turning point in the evolution of digital rights and Freedom of Expression in India. This research paper aims to delve into the intricacies of the case and its implications, particularly focusing on the interpretation of S.144 of the Code of Criminal Procedure, exploring the historical underpinnings, its intent, and application in the digital age. It commences by reviewing the available literature and opinion this case had garnered. The core of the research dissects the case, elucidating the nuances of the arguments presented and the Supreme Court's interpretation. Conclusively, the research discusses the ripple effects of the case, both immediate and potential and briefs upon equivalent international perspectives. Through a meticulous analysis of the case, it develops an in-depth understanding of the evolving dynamics between individual liberties and state imperatives in the digital era.

Keywords: Digital Rights, Free Speech, Balance of State and Individual Liberty

Part I: Introduction

The announcement – '*S.144 to be imposed in your city,*' often leaves the reader feeling helpless and trapped. Being unaware of his rights and the legal implications of this section, a reader usually tends to remain unanswered. The digital revolution has not only transformed the way information is disseminated but has also given rise to new challenges for the preservation of civil liberties and public tranquillity. The Supreme Court's judgement in the case of *Anuradha Bhasin v. Union of India*¹ ("**The Case**") emerges as a beacon guiding the jurisprudential path at the intersection of digital rights, freedom of expression, and the legal provisions designed to maintain public order. This research paper embarks on a thorough exploration of the *Anuradha Bhasin* case, unravelling

¹ *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308.

its intricacies and implications, with a specific lens on the legality of Section 144 of the Code of Criminal Procedure (“S.144”). The case significance lies in its ability to navigate the balance between individual rights and the state's prerogative to maintain public order, particularly within the evolving sphere of online communication platforms. By delving into the case's arguments, the Supreme Court's rationale, and the broader context of Section 144, this study dissects the complexities of digital rights and the constraints placed on them by the exigencies of public order maintenance. It concludes by shedding light on the harmonious coexistence of personal freedoms and societal stability in an increasingly interconnected world.

Research Methodology: This research has been conducted using the Case Study approach and the population of Universe includes all the parties involved in this case including its viewers, readers, researchers, and vocalists.

Part II: Literature Review

Scholars have unanimously recognized the seminal importance of the case in addressing the dynamic interplay between technology and the constitutional guarantees of Free Speech.

Anuradha Bhasin's argument hinges on the necessity of safeguarding the right to access information and express opinions in an increasingly digital world. The following are a set of scholarly opinions and articles in light of the case:

1. Scholars like *Sudhir Krishnaswamy* argue that the case has contributed significantly to the evolving jurisprudence of Freedom of Expression, carving a path that requires nuanced consideration of digital spaces while respecting citizens' constitutional rights.²
2. Legal scholars, such as *Prashant Padmanabhan*, have delved into the historical context of Section 144, its original intent, and the challenges posed by its application in a digital society. The debate surrounding the constitutionality and potential misuse of Section 144 under the Code of Criminal Procedure, 1973 (“S.144”) has intensified in the wake of the judgment, prompting discussions on whether the provision adequately balances security

² Sudhir Krishnaswamy, "Anuradha Bhasin v. Union of India and the Challenge of Internet Shutdowns," *The Wire*, December 11, 2020.

- concerns with the protection of individual liberties.³
3. Legal experts like *Raman Jit Singh Chima* emphasize the significance of considering the wider interpretation of national security while applying restrictions on internet access and freedom of expression. This viewpoint raises questions about the threshold at which digital communication may be curtailed in public interest, emphasizing the significance of proportionality and necessity in such decisions.⁴
 4. Furthermore, scholars such as *Chinmayi Arun* have pointed out the global resonance of the judgment. The case resonates with international discussions on internet shutdowns, free speech, and digital rights, particularly in countries grappling with similar issues related to national security and information control.⁵

Thus, the case has engendered a rich and diverse body of literature that reflects its profound impact on the understanding of digital rights, freedom of expression, and the boundaries of state control. Scholars have expounded upon various dimensions of the case, including its implications for constitutional principles, interpretation of Section 144, considerations of gender justice, and its resonance in the global context. The extensive academic discourse on this landmark judgment serves as a testament to its lasting influence on legal thought and its role in shaping the digital rights landscape in India.

Part III: Case Summary

The Hon'ble Supreme Court's verdict in the landmark Indian Case of *Anuradha Bhasin v. The Union of India* has laid the foundation of a new Digital Rights Era and is summarized as below:

- 1. Nature of case: Civil Writ Petition No. 1031.**
- 2. Judicial Body: The Supreme Court of India.**
- 3. Date: 10 January 2020.**
- 4. Parties Involved:**

³ Prashant Padmanabhan, "Internet Shutdowns and the Section 144 Gambit: Revisiting *Anuradha Bhasin*," *The Leaflet*, January 22, 2020.

⁴ Raman Jit Singh Chima, "The Indian Supreme Court's Internet Shutdown Decision is Historic. But It Also Reinforces the Idea that the Internet is Dispensable," *Business Standard*, January 11, 2020.

⁵ Chinmayi Arun, "The Global Relevance of *Anuradha Bhasin v. Union of India*," *The Quint*, January 11, 2020.

- Petitioner: Anuradha Bhasin, a veteran journalist and the Executive Editor of the Kashmir Times.
- Respondent: Union of India, representing the Government Authorities involved in the imposition of restrictions on communication in Jammu and Kashmir.

5. Background: Following the abrogation of Article 370 of the Indian Constitution (“**Article 370**”) in August 2019, Jammu and Kashmir witnessed a communication lockdown involving the suspension of telephone and internet connectivity, among other restrictions imposed under S.144. Anuradha Bhasin approached the Supreme Court, challenging the curbs imposed on media activities and freedom of speech in the region.

6 Facts of the Case:

- Being a focal point of a longstanding dispute between India and Pakistan, Kashmir enjoyed a unique status and had its own constitution under Article 370 of the Indian Constitution. This special status included restrictions on non-residents from purchasing land or property in the region.
- However, on August 5, 2019, the Indian Government released the Constitution (Application to Jammu and Kashmir) Order, a move that effectively dismantled Jammu and Kashmir's unique constitutional status.⁶
- In the days leading up to this Constitutional Order, the Indian government initiated a series of measures, including the evacuation of tourists and Amarnath Yatra pilgrims, the closure of businesses and schools, and the suspension of mobile phone networks, internet services, and landline connectivity in the region.

Additionally, restrictions on the right to free speech and assembly were imposed by invoking Section 144, which allows local authorities to restrict gatherings and impose curfews.

- The restrictions prompted significant legal challenges and were challenged for violating Article 19 of India's Constitution.
- *Anuradha Bhasin*, the editor of the Kashmir Times Srinagar Edition, filed the petition. She argued that the internet is a vital tool for modern journalism and that its shutdown had brought print media to a standstill. She further contended that the government had not adequately evaluated whether the internet blackout was necessary and proportionate to its goals. She

⁶ See official announcement on: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192505>.

asserted that the government imposed these restrictions under the disguise of maintaining law and order, even though there was no imminent threat to public order when the order was issued.

- An intervenor in the case highlighted concerns that granting the State complete discretion to restrict fundamental rights in the name of preventing terrorism and maintaining national security could enable such restrictions in various circumstances. Furthermore, these limitations curtailed residents' ability to comment on the constitutional amendment that removed Jammu and Kashmir's special status.
- Despite being ostensibly temporary, the restrictions endured for over 100 days, raising concerns about their proportionality and compliance with the provisions of the Code of Criminal Procedure (“Cr.P.C”).
- During the legal proceedings, the Attorney General argued that similar actions had been taken in the past following the killing of a terrorist in the region.
- Echoing this stance, the Solicitor General, emphasized that the State's primary duty was to ensure the security and lives of its citizens. He challenged the petitioners' portrayal of the restrictions' impact, asserting that individual movement had not been universally restricted and that media outlets remained operational. He contended that the restrictions were a necessary preventive measure, given the speculative and provocative discourse surrounding the region.
- Regarding the communication and internet shutdown, the Solicitor General argued against applying the same standards governing free speech for newspapers to the internet. He cited the potential misuse of social media to incite violence and the risk of false information spreading. He also raised concerns about the ‘dark web’ which could facilitate illicit activities.⁷

a. Issues Raised:

- **Freedom of Speech and Expression:** The central issue revolved around whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is as guaranteed under Article 19(1)(a) of the Indian Constitution.
- **Proportionality and Necessity:** The case questioned whether the restrictions imposed by the government were proportionate and necessary to achieve the goal of maintaining public order and national security.
- **Government Exemption:** One of the key issues was whether the government could claim

⁷ Para 8, Page 18, Anuradha Bhasin v. Union of India, 2020.

exemption from producing all the orders passed under Section 144, and other orders under the Suspension Rules.

- **Validity:** The case questioned the validity of prohibiting internet access and the impositions of restrictions under Section 144, by the government.
- **Freedom of Press:** Lastly, the case questioned whether the Freedom of Press of the Petitioner was violated due to the restrictions imposed.

b. Key Arguments Presented:

- **Petitioner's Arguments:** *Anuradha Bhasin* contended that the communication blockade had severely hampered the functioning of the press, hindering journalists' ability to report news and citizens' access to information. She argued that the restrictions had curtailed the democratic right to know and be informed, rendering the right to freedom of speech and expression practically ineffective.
- **Respondent's Arguments:** The Union of India defended the communication restrictions as necessary to maintain public order and prevent the dissemination of misinformation and incitement of violence. It cited security concerns and the potential misuse of communication platforms by anti-national elements as reasons for the curbs.

c. Supreme Court's Ruling:

- In its judgment delivered on January 10, 2020, a three-judge bench led by *Justice N.V. Ramana* ruled in favour of upholding the importance of Free Speech and Expression in the Digital Age.
- The Court declared that Freedom of Speech and Expression including Freedom to practice any profession or carry on any trade, business, or occupation over the medium of internet as a Fundamental Right under Article 19(1)(a) and Article 19(1)(g).
- Recognising the significance of internet in the digital age, the Court held that any order which suspended internet services for an indefinite period was illegal.
- The court acknowledged the vital role of the media in a democratic society and emphasized that any curtailment of these rights must follow the principles of necessity and proportionality.
- The court directed the government to review and reassess the restrictions imposed in Jammu and Kashmir, underscoring the importance of ensuring that freedom of speech and expression is not stifled.

d. Impact of the Case:

The Anuradha Bhasin case set a significant precedent by reaffirming the importance of Free Speech in the digital age. It shed light on the need for balance between national security concerns and fundamental rights. The judgment has been instrumental in shaping discussions about the legality and constitutionality of communication clampdowns, not only in Jammu and Kashmir but also in other parts of the country facing similar situations. The case also exemplifies the judiciary's role in safeguarding fundamental rights in the context of evolving digital communication platforms. The case underscores the need to strike a harmonious balance between upholding national security and preserving the essence of democratic discourse and information dissemination.

Part IV: Significance of S.144

1. **Purpose and Scope:** The primary purpose of Section 144 is to prevent situations that could lead to violence, breach of peace, or other disturbances to public tranquillity. It grants executive Magistrates the authority to impose restrictions on assembly, movement, and carrying arms within a specified area when there is a potential threat to peace. This preventive measure is aimed at mitigating the risk of disorder by restraining individuals from engaging in activities that might escalate tensions.
2. **Historical Context of S.144**
 - Babulal Parate v. State of Bombay: Being the first case questioning the constitutionality of S.144, the Apex Court denied the presence of an arbitrary power confined in the government and laid down the protocol that must be exercised by the Magistrate to enforce this power.⁸
 - Madhu Limaye v. Subdivisional Magistrate, Monghgyr: The Hon'ble Court emphasized on the exercise of this power in a judicial manner in its applicability and extent.⁹
 - Gulam Abbas v. State of Uttar Pradesh: The Court stated that writ jurisdiction could be exercised under Article 226 of the Constitution.¹⁰

⁸ AIR 1960 SC 51

⁹ AIR 1970 3 SCC 746

¹⁰ AIR 1982 1 SCC 71

- *K. S. Puttaswamy v. Union of India*: The obligatory nature of the test of proportionality to be conducted before the imposition of S.144 was introduced in this case.¹¹

3. Significance of S.144 considering the case

The judiciary's role in ensuring the proper application of this section is crucial. Courts have intervened to strike down orders that were found to be arbitrary, excessive, or lacking proper justification. This case serves as an example of the judiciary's commitment to upholding the balance between public order and individual rights, especially in the context of digital communication restrictions. The following judgement was held by the Hon'ble Court with respect to the applicability and enforcement of S.144 in India:

- The case stated that mere apprehension of danger can be a valid ground for imposing S.144 if it is an 'emergency'.
- The Court also held that the powers would not override legitimate expression of opinion or the exercise of any rights. Moreover, the Court imposed a duty on the Magistrate to balance the rights of a citizen along with the restrictions imposed and act in the least intrusive manner possible.
- The case also laid down four parameters that must be included before imposing this restriction which are:
 - i. *Prior Inquiry Before Issuing Order* – a careful inquiry for the existence of a sufficient ground and the urgency for a speedy remedy, must be taken into consideration.
 - ii. *Content of the Order* – the facts stated in the order must indicate the reasons which led the Magistrate to issue such an order.
 - iii. *Communication of the Order* – the Order must be notified by proclamation and publication to convey the information to all the persons affected.
 - iv. *To Act judicially* - While modifying or rescinding the Order, the Magistrate is required to give a personal hearing as well as a justification if it rejects the application.¹²
 - v. Lastly, the Court warns the authorities stating that a repetitive use of this provision shall constitute as abuse of power.

¹¹ AIR 2017 10 SCC 1

¹² Para 108, page 91; Anuradha Bhasin v. Union of India, 2020.

Part V: Critical Analysis

1. At its core, the ruling in the 'Anuradha Bhasin v. Union of India' case upholds the principles of Natural Justice by affirming that the executive or administrative authorities must provide access to their orders. In most of the cases, the State has often relied on concealed and undisclosed decrees and documents to justify its actions, even in cases such as those in Kashmir.
2. The Supreme Court's decision has effectively stripped the State of the ability to employ secrecy to infringe upon or curtail individual rights. It achieves this by mandating that the State must proactively publish orders through written procedures and disclose orders issued under the Internet rules, as well as those passed pursuant to Section 144. This is a
3. significant victory for those who champion the protection of civil rights; it ensures that state officials cannot hide behind secrecy when issuing arbitrary decrees.
4. In this regard, the Supreme Court emphasized that S.144 cannot be utilized to suppress lawful opinions, grievances, or the exercise of democratic rights and any such orders must adhere to the principles of proportionality. This is a crucial development, given that Section 144 has often been wielded to stifle peaceful protests and student activities. The Supreme Court's stance is not just a reminder of the importance of due process for authorities and the government; but is also a renewed commitment to upholding constitutionalism in India.
5. Moreover, this verdict carries significant implications for future governance. The Supreme Court's decision led to the cancellation of Internet orders in Kashmir because it was deemed unlikely that the orders issued by State authorities could conform to the court's standards. In cases where orders are not revoked, they must be made public, and evidence must be provided to demonstrate compliance with the court-established legal standards. Failure to do so could result in the authorities disregarding the present judgment.
6. However, there are notable limitations to the judgment. Immediate relief is not provided to the people of Jammu and Kashmir, as the directives were not reversed. Additionally, the bench clarified that the right to access the Internet is a constitutional right that can be regulated or altered but cannot supersede or amend the fundamental rights enshrined in Part III of the Constitution.
7. In essence, the verdict does not challenge the government's authority but rather delineates the extent to which the government can restrict Internet access. This underscores the court's commitment to striking a balance between security concerns and human rights. The judgment unequivocally holds the government accountable for arbitrary Internet

shutdowns and establishes essential guidelines for the future. For the people of Jammu and Kashmir, this decision represents a significant milestone in their quest for justice and the protection of their rights.

Part VI: International Perspective

The case shares common threads with international cases and legal frameworks addressing Freedom of Expression and public order. While each jurisdiction's views may differ, the underlying principles of proportionality, necessity, and judicial oversight remain consistent.

The following cases contribute to a global jurisprudential dialogue, reflecting the universal quest for a harmonious equilibrium between individual rights and societal stability:

1. **European Convention on Human Rights (“ECHR”)**: The European Convention on Human Rights, has witnessed cases akin to Anuradha Bhasin. In *Handyside v. the ECHR* emphasized that restrictions on expression must be proportionate to the aim. This principle echoes the Anuradha Bhasin case's scrutiny of the necessity and proportionality of Section 144 orders, underscoring the global quest for balanced legal frameworks.¹³
2. **Delfi AS v. Estonia**: By acknowledging duties of online platforms to remove harmful content promptly, the ECHR's verdict resonates with the Anuradha Bhasin case's exploration of digital rights within the context of public order. While distinct in nature, both cases underline the universal concern of reconciling online expression with societal interests, reflecting the dynamic digital era.¹⁴
3. **International Covenant on Civil and Political Rights (ICCPR)**: The ICCPR, under Article 19, recognizes Freedom of Expression. The Human Rights Committee, in cases like *Castells v. Spain* (1992), has emphasized that restrictions must pursue genuine aims and be necessary and proportionate. This aligns with the Anuradha Bhasin case's scrutiny of the necessity and proportionality of communication restrictions, illustrating a shared global principle.^{15 16}

¹³ ECHR 5 (1976)

¹⁴ (2015) ECtHR 64669/09

¹⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

¹⁶ U.N. Doc. CCPR 702 (2000).

4. **Shutdowns and Access to Information:** International cases like *Media Legal Defence Initiative v. Azerbaijan* (2016) challenged internet shutdowns as violations of freedom of expression. This intersects with the Anuradha Bhasin case's exploration of communication shutdowns in Jammu and Kashmir. Both cases highlight the global significance of access to information in the digital age, stimulating conversations about the interplay between rights and security.¹⁷

5. **Digital Communication and Censorship:** The case of Turkish journalist *Ahmet Altan*, sentenced for online expression, mirrors the broader global struggle against digital censorship. Although distinct, this resonates with the Anuradha Bhasin case's exploration of restrictions in the digital era. These cases collectively underscore the global challenge of balancing digital communication's potential with public order considerations.¹⁸

Part VII: Conclusion

The case of 'Anuradha Bhasin v. Union of India' unquestionably represents a pivotal moment in shaping the landscape of Digital Rights and Freedom of Expression in India. It has not only redefined the limits of governmental authority when it comes to restricting Fundamental Rights but has also underscored the urgent need to adapt our existing legal frameworks to the realities of the Digital Age. A comprehensive review of Section 144, considering the evolving digital communication platforms and the crucial importance of safeguarding individual freedoms is imperative. To achieve this, fostering an open and inclusive dialogue that involves stakeholders from all sectors of society is essential. This collaborative approach is crucial in ensuring the protection of citizens' rights while addressing genuine security concerns. By doing so, we can pave the way for a more equitable and rights-respecting digital future for India.

¹⁷ (2016) ECHR 837

¹⁸ Turkish journalist Ahmet Altan's case: Committee to Protect Journalists, "Turkey sentences journalist Ahmet Altan to more than six years in prison," [<https://cpj.org/2019/12/turkey-sentences-journalist-ahmet-altan-to-more-th/>]

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- The Code of Criminal Procedure, 1973.

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