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DISCONNECTED RIGHTS: INTERNET SHUTDOWNS AND HUMAN RIGHTS IN INDIA AFTER ANURADHA BHASIN

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ABSTRACT

Internet shutdowns have become a routine instrument of public-order management in India, which has recorded more shutdowns than any other country since 2016. This article examines whether the Indian legal framework governing shutdowns adequately protects human rights. It traces the recognition of the internet as an enabler of fundamental rights in international and constitutional law, analyses the statutory regime from the Indian Telegraph Act, 1885 and the Suspension Rules, 2017 to the Telecommunications Act, 2023 and the Suspension Rules, 2024, and evaluates the judicial response in *Anuradha Bhasin v. Union of India* and later decisions. The article argues that, although the Supreme Court has subjected shutdowns to the discipline of proportionality, the present framework remains weak in practice because review is confined to the executive, transparency duties are inconsistently observed, and persons harmed by unlawful shutdowns have no effective remedy. It concludes with reform proposals, including independent oversight, a statutory proportionality test and accountability mechanisms.

Keywords: Internet shutdowns; Human rights; Article 19; Proportionality; *Anuradha Bhasin*; Telecommunications Act, 2023; Jammu and Kashmir

I. INTRODUCTION

On the night of 4 August 2019, mobile networks, landlines and internet services were suspended across Jammu and Kashmir on the eve of the abrogation of the special constitutional status of the erstwhile State.¹ High-speed mobile internet remained restricted for roughly eighteen months, and the episode is widely regarded as one of the longest shutdowns recorded in any democracy. It forced Indian constitutional law to confront a question it had hardly

¹ The background is set out in *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

considered before: may the State switch off the internet and, if it may, on what terms?

The question is not confined to Kashmir. Access Now recorded 65 shutdowns in India in 2025, the lowest annual figure since 2017 but still the second highest in the world after Myanmar. Since 2016, India alone accounts for 920 of the 2,102 shutdowns documented globally.² Shutdowns are ordered in response to protests, communal tension and even the conduct of examinations, and they affect hospitals, classrooms, markets and newsrooms alike. For a country that has made digital services central to welfare delivery, banking and education, the persistence of shutdowns is a paradox that calls for legal scrutiny.

This article examines whether the Indian legal framework on internet shutdowns adequately protects human rights. It argues that the Supreme Court in *Anuradha Bhasin* rightly subjected shutdowns to the discipline of proportionality, but that the statutory scheme, now contained in the Telecommunications Act, 2023 and the Telecommunications (Temporary Suspension of Services) Rules, 2024, still leaves review in executive hands, depends on weak transparency and offers no remedy to those harmed. The study is doctrinal. It relies on constitutional provisions, statutes, judicial decisions, international human rights instruments and reports of civil society and parliamentary bodies. Part II outlines the human rights foundations of internet access; Part III maps the legal framework; Part IV examines the judicial response; Part V turns to the experience of Jammu and Kashmir; Part VI considers the human cost; Part VII offers a critical assessment; and Part VIII suggests reforms before the conclusion.

II. THE INTERNET AS AN ENABLER OF HUMAN RIGHTS

Indian constitutional law has long treated freedom of speech as a right that extends to the means of communication. As early as 1950, the Supreme Court held that freedom of speech includes the freedom of propagation and circulation of ideas.³ In *Shreya Singhal*, the Court recognised the internet as a distinct medium whose reach and speed set it apart from older media, yet affirmed that Article 19(1)(a) applies to online expression in full.⁴ A shutdown, which silences every user in a territory irrespective of what any of them says, is therefore not a restriction on particular speech but a restriction on the medium of speech itself.

International human rights law points in the same direction. Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and

² Access Now and #KeepItOn Coalition, *Rising Repression Meets Global Resistance: Internet Shutdowns in 2025* (2026).

³ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

Political Rights (ICCPR), to which India is a party, protect the freedom to seek, receive and impart information through any media of one's choice. Restrictions are permitted only if they are provided by law, pursue a legitimate aim listed in Article 19(3) and are necessary and proportionate.⁵ The Human Rights Committee has stated that generic bans on the operation of websites and information systems are incompatible with Article 19(3),⁶ and the UN Special Rapporteur on freedom of expression has described the cutting off of internet access, whatever the justification, as disproportionate.⁷ In 2016, the Human Rights Council condemned measures that intentionally prevent or disrupt access to or the dissemination of information online.⁸

The internet is also an enabling right. It carries telemedicine, online education, digital banking, welfare delivery, journalism and the organisation of peaceful assembly, so that its disruption jeopardises life and livelihood under Article 21, the right to education, the right to health recognised in Article 12 of the International Covenant on Economic, Social and Cultural Rights, and the freedom to carry on a trade or profession under Article 19(1)

(g). Courts elsewhere have begun to treat shutdowns accordingly. The ECOWAS Court of Justice held that Togo's 2017 shutdown violated freedom of expression,⁹ and a Jakarta administrative court found the 2019 shutdown in Papua unlawful.¹⁰ In India, the Kerala High Court has held that access to the internet forms part of the right to education and the right to privacy under Article 21.¹¹

III. THE LEGAL FRAMEWORK GOVERNING SHUTDOWNS

A. Section 144 of the Code of Criminal Procedure

Before 2017, shutdowns in India were commonly ordered by district magistrates under Section 144 of the Code of Criminal Procedure, 1973, a provision that empowers executive magistrates to issue urgent orders to prevent obstruction, annoyance or danger. In *Gaurav Sureshbhai Vyas*, the Gujarat High Court upheld the use of this power to suspend mobile internet during the 2015

⁵ International Covenant on Civil and Political Rights 1966, art 19. India acceded to the Covenant in 1979.

⁶ UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34 (2011), para 43.

⁷ Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/17/27 (2011).

⁸ UN Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/RES/32/13 (2016).

⁹ *Amnesty International Togo v. The Togolese Republic*, ECW/CCJ/JUD/09/20 (ECOWAS Court of Justice, 25 June 2020).

¹⁰ Jakarta State Administrative Court, judgment of 3 June 2020, concerning internet throttling and shutdown in Papua and West Papua in 2019.

¹¹ *Faheema Shirin R.K. v. State of Kerala*, 2019 SCC OnLine Ker 2976.

agitation in the State.¹² The same power now survives as Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in force since 1 July 2024.¹³ Its use for shutdowns is problematic because it was designed for localised and short-term situations rather than for the regulation of a communication network.

B. *The Suspension Rules, 2017*

In August 2017, the Central Government framed the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 under the Indian Telegraph Act, 1885.¹⁴ They authorised the Union or State Home Secretary to order the suspension of telecom services, required reasons to be recorded in writing, and created review committees of senior executive officials. The Supreme Court had earlier explained the statutory trigger: a public emergency is a sudden condition or state of affairs affecting the people at large and calling for immediate action, while public safety means freedom from danger or risk for the people at large.¹⁵ The Rules were later amended to cap the duration of any order at fifteen days.

C. *The Telecommunications Act, 2023 and the Rules of 2024*

The Telecommunications Act, 2023 replaced the Telegraph Act and, through Section 20, retained the language of public emergency and public safety as the trigger for suspending telecommunication services.¹⁶ The Telecommunications (Temporary Suspension of Services) Rules, 2024, notified on 22 November 2024, replaced the 2017 Rules.¹⁷ Under them, an order must be reasoned and in writing, must be published, must be confined to a specified geographical area and to what is necessary for the stated purpose, and must not exceed fifteen days. The order must be forwarded to a Review Committee within twenty-four hours. The committee, chaired by the Cabinet Secretary at the Centre and by the Chief Secretary in a State, must meet within five days and may set aside non-compliant orders. Nodal officers are designated to implement orders, and in unavoidable circumstances an order may be issued by an officer of lower rank but lapses unless confirmed by the competent authority within twenty-four hours. The Rules thus incorporate several safeguards that originate in *Anuradha Bhasin*, but, as Part

¹² *Gaurav Sureshbhai Vyas v. State of Gujarat*, Gujarat High Court (2015).

¹³ Bharatiya Nagarik Suraksha Sanhita 2023, s 163.

¹⁴ The Rules were framed under s 7 of the Indian Telegraph Act 1885; s 5(2) of the Act supplied the substantive grounds of public emergency and public safety.

¹⁵ *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

¹⁶ Telecommunications Act 2023, s 20.

¹⁷ Telecommunications (Temporary Suspension of Services) Rules 2024, notified on 22 November 2024. For an analysis, see Software Freedom Law Center, India, 'Telecom Suspension Rules, 2024: New Language, Same Shutdowns?' <<https://sflc.in/telecom-suspension-rules-2024/>>.

VII shows, their practical efficacy remains in doubt.

IV. THE JUDICIAL RESPONSE

A. *Anuradha Bhasin v. Union of India*

The petition by Anuradha Bhasin, executive editor of the *Kashmir Times*, and others challenged the communication restrictions in Jammu and Kashmir. Delivering judgment on 10 January 2020, the Supreme Court made several important findings.¹⁸ First, freedom of speech and expression, and the freedom to practise any profession or carry on any trade, business or occupation over the internet, enjoy constitutional protection under Articles 19(1)(a) and 19(1)(g). Second, restrictions must satisfy Articles 19(2) and 19(6) and, drawing on *Modern Dental College* and *Puttaswamy*, must meet the test of proportionality: a legitimate aim, suitability, necessity in the sense that no less restrictive alternative is available, and a balance between the restriction and the right affected.¹⁹ Third, indefinite suspension is impermissible, and the Court read the requirement of temporariness into the Suspension Rules. Fourth, orders must be published and supported by reasons so that they can be tested in judicial review. Fifth, the power under Section 144 cannot be used to suppress the legitimate expression of opinion or the exercise of democratic rights. Finally, the Court directed the Review Committee to review orders periodically, within seven working days of the previous review.

The Court, however, did not decide whether access to the internet is itself a fundamental right, and it did not pronounce on the validity of the actual orders, which had not been produced before it. It directed instead that the competent authorities review the orders in force and make them public. The judgment thus created a principled framework but left much of its enforcement to the executive.

B. *Foundation for Media Professionals*

The limits of this approach became apparent in *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir*, decided in May 2020 during the COVID-19 pandemic.²⁰ The petitioners sought restoration of 4G services, citing the needs of doctors, students and businesses. The Court acknowledged the importance of the rights at stake and the need to balance them against national security, yet it declined to direct restoration and instead

¹⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

¹⁹ *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²⁰ *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir*, 2020 SCC OnLine SC 453.

constituted a special committee headed by the Union Home Secretary to examine the matter. High-speed mobile internet was restored only in early 2021. Critics observed that an executive committee had been asked to review executive action, and that the Court's deference diluted the proportionality test it had announced a few months earlier.

C. Later Developments

Compliance with the guidance in *Anuradha Bhasin* has since been tested repeatedly. In February 2024, the Supreme Court indicated in proceedings concerning compliance that the findings of review committees must be published, even if their deliberations need not be.²¹ This development is welcome, but it shows that basic transparency requirements had to be enforced through litigation, years after the original judgment.

D. Is Access to the Internet a Fundamental Right?

The most significant question left open by the Supreme Court is whether access to the internet is itself a fundamental right. The Kerala High Court answered in the affirmative in *Faheema Shirin*, but that decision arose from a different context, a college hostel rule restricting the use of mobile phones, and it does not bind other High Courts. There is a respectable constitutional argument in favour of recognition. The Supreme Court has repeatedly read Article 21 expansively, treating the right to livelihood and the right to privacy as integral to life and personal liberty.²² Where education, health care, banking and public services are increasingly delivered online, exclusion from the network can amount to exclusion from the means of exercising these rights.

The counter-argument is that courts are cautious about declaring new positive entitlements, which carry obligations of infrastructure and expenditure. A workable middle path is to treat internet access as a derivative or enabling right: the State need not guarantee connectivity to every person, but once connectivity exists, any interference with it must be justified under Articles 19 and 21 on the proportionality standard. This is, in substance, the position reached in *Anuradha Bhasin*, and an express declaration would simply give it a firmer footing.

²¹ Internet Freedom Foundation, 'Supreme Court Orders Publication of Review Committee Orders Relating to Internet Shutdowns' (February 2024) <<https://internetfreedom.in>>.

²² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

V. THE EXPERIENCE OF JAMMU AND KASHMIR

Jammu and Kashmir offers the most instructive case study, because the region has been subjected to shutdowns more often and for longer periods than most other parts of the country. The restrictions that began in August 2019 were lifted in stages: first through lists of permitted websites, then through speed-limited 2G mobile access, and finally through the restoration of 4G services in early 2021. Throughout this period, residents, students, doctors and journalists experienced the shutdown as a prolonged condition of daily life and not as a short-lived emergency measure.

The region's experience is relevant in two respects. First, it shows how a measure that the law describes as temporary can become semi-permanent through successive orders, each reviewed, if at all, by the same executive that issued it. Second, it demonstrates the persistence of transparency problems even after *Anuradha Bhasin*. Civil society groups have pointed to the partial disclosure of shutdown orders by the administration of the Union Territory, which prevents affected persons from understanding the reasons for the restrictions or challenging them effectively.²³ The region thus illustrates both the promise of the constitutional framework and the distance that remains between doctrine and practice.

VI. THE HUMAN COST OF SHUTDOWNS

Shutdowns impose costs that are felt across the spectrum of rights. In the field of health, they disrupt tele-consultation, ambulance coordination and access to medical records. In education, students lose access to online classes, study material and examination forms, a harm that was acutely visible in Jammu and Kashmir during the pandemic, when restricted speeds made remote learning unreliable. Small traders, artisans, farmers and gig workers lose income when digital payments and online markets fail. Journalists are unable to file reports or verify facts, and the resulting information vacuum often fuels the very rumours that shutdowns are meant to contain.

These harms are collective and fall hardest on those with the fewest alternatives, such as rural residents, daily-wage earners, women and persons with disabilities who depend on remote services. A shutdown also operates as a form of collective punishment, since everyone in an area bears the burden of acts attributed to a few.

The security justification is itself contested. Empirical research on India suggests that

²³ Internet Freedom Foundation, 'J&K's Partial Disclosure of Internet Shutdown Orders Undermines Transparency' <<https://internetfreedom.in/tag/internet-shutdowns/>>.

shutdowns are associated with an increase rather than a decrease in violent protest, possibly because they impede peaceful coordination and the circulation of accurate information.²⁴ If shutdowns do not reliably achieve their stated aim, they struggle to satisfy the suitability and necessity limbs of the proportionality test.

VII. A CRITICAL ASSESSMENT

A. *Executive Review of Executive Action*

Both the 2017 and the 2024 Rules entrust review to committees composed of senior executive officials. The Chief Secretary who chairs a State committee belongs to the same administrative hierarchy that issues shutdown orders through the Home Department. Whatever the committee's formal power to set aside orders, the structure invites confirmation rather than scrutiny. The inclusion of independent members, such as a retired judge or an expert in telecommunications or human rights, would lend the safeguard institutional credibility, but the 2024 Rules did not adopt such a change.

B. *The Transparency Deficit*

Publication of orders is the foundation of judicial review, yet civil society organisations have repeatedly complained of orders that are never made public, and commentators note that the 2024 Rules do not require publication in real time. The Parliamentary Standing Committee on Communications and Information Technology, in its 2021 report on the suspension of telecom services, drew attention to the absence of centralised information on shutdowns with the Union Government.²⁵ Without reliable data, neither Parliament nor the courts can assess whether shutdowns are used as a last resort.

C. *Proportionality in Practice*

The statutory trigger of public emergency or public safety has been understood, since *PUCL*, to require a grave situation affecting the public at large. Shutdowns, however, are often ordered pre-emptively, during festivals or examinations, or over entire districts for days. Orders of this kind rarely demonstrate that less restrictive measures were considered, such as the targeted removal of unlawful content, the blocking of specific accounts or platforms under the

²⁴ Jan Rydzak, 'Of Blackouts and Bandhs: The Strategy and Structure of Disconnected Protest in India' (Global Digital Policy Incubator, Stanford University, 2019).

²⁵ Standing Committee on Communications and Information Technology (17th Lok Sabha), Twenty-Sixth Report, *Suspension of Telecom Services/Internet and its Impact* (2021).

Information Technology Act, 2000, or increased policing. The Rules require geographical confinement but do not oblige the authority to record a reasoned comparison of alternatives, which is the heart of the necessity inquiry.

D. *The Absence of Remedy*

Courts are frequently approached after a shutdown has ended, and petitions are then disposed of as infructuous, although the issue is plainly capable of repetition yet evading review. Neither the Act nor the Rules provide for compensation, for accountability of officers who issue unlawful orders, or for a mandatory post-facto audit. A right without a remedy is hollow, and the maxim *ubi jus ibi remedium* demands more than the existing framework offers. India's practice also sits uneasily with its obligations under Article 19 of the ICCPR, as interpreted by the Human Rights Committee.

E. *Fragmented Practice in a Federal Structure*

Shutdown orders may be issued by both the Union and the State governments under the Rules, because telecommunications fall within the Union List while public order is a State subject.²⁶ The result is a patchwork of practices, with different Home Departments applying different standards of reasoning, publication and duration. In the absence of uniform guidelines, centralised monitoring and a common reporting format, it is difficult to ensure that the safeguards of the Rules are applied consistently across the country. A federal system does not require uniform outcomes, but it does require that every authority that exercises the power respects the same constitutional minimum.

VIII. SUGGESTIONS

First, the proportionality test in *Anuradha Bhasin* should be codified. Every order should record in writing the specific threat, the evidence supporting it, the alternatives considered and rejected, and the reasons for the chosen area and duration. Second, review should be made independent. Review committees should include a retired High Court judge and an independent expert, and civil society proposals for automatic judicial review of any shutdown exceeding a short threshold, such as twenty-four hours, deserve serious consideration.

Third, transparency should be real-time and centralised. Orders and committee findings should be uploaded to a public portal within hours of issue, and the Government should publish an

²⁶ Constitution of India, Seventh Schedule, List I, Entry 31 and List II, Entry 1.

annual consolidated report to Parliament. Fourth, essential services such as hospitals, emergency response, banking and educational services should be exempted or whitelisted, and examination-related concerns should be met through measures confined to examination centres. Fifth, the law should provide for accountability and compensation where a shutdown is held unlawful. Finally, the Supreme Court should authoritatively settle the question left open in *Anuradha Bhasin* and declare that access to the internet is integral to the rights guaranteed by Articles 19 and 21.

IX. CONCLUSION

The recognition in *Anuradha Bhasin* that constitutional freedoms extend to the internet, and that any restriction must be reasoned, temporary and proportionate, was a landmark for human rights in India. Yet the experience since 2020 shows that principles declared by courts do not enforce themselves. The 2024 Rules improve on the language of the 2017 Rules, but they leave review to the executive, transparency to administrative goodwill and remedies to chance. If the internet is the principal public square of the twenty-first century, the power to switch it off must be hedged with the same constitutional discipline as any other power to restrict liberty. Strengthening independent oversight, codifying proportionality and providing remedies would move India closer to that standard and align its practice with the human rights commitments it has accepted.