

**Case Commentary - ANURADHA BHASIN VERSES UNION OF INDIA**

C.VAISHNAVI SARMA

Student of School of Law, VELTECH UNIVERSITY

Best University - C.VAISHNAVI SARMA, Case Commentary - ANURADHA BHASIN VERSES UNION OF INDIA, 2 (5) & 1 of 2022, IJLR

**ABSTRACT**

In today's world, the internet plays a significant role in our daily lives. For many things, such as trade and business, we rely heavily on the internet. The Internet has grown to be so significant that it is now covered in Part III of the Indian Constitution. The main objective of the lawsuit was to determine if the prohibition on using internet facilities was legal, hence this judgment is quite significant. In addition, the Apex Court has established a set of guidelines to prevent the Government from abusing its authority, particularly in such circumstances. The problem arose in 2019 when the Government of Jammu and Kashmir issued a "Security Advisory" and advised tourists. to return to ensure their safety. In addition, orders were issued to close educational institutions. The judgment covered various essentials pertaining liberty and security of individual.

Keywords: Fundamental Rights under Part III of the Indian constitution, the test of proportionality, Freedom of the Press, Restrictions Under Section 144, Code of Criminal Procedure, and internet shutdown

<b>DATE OF THE ORDER</b>	10.01.2020
<b>JURISDICTION</b>	Supreme Court of India
<b>QUORUM</b>	N. V. Rammana, R. Subhash Reddy and B.R.Gavai, JJ.
<b>AUTHOR OF THE JUDGMENT</b>	N.V. Rammana, J.
<b>APPELLANT</b>	Anuradha Bhasin and others.
<b>RESPONDENT</b>	Union Of India
<b>COUNSEL FOR APPELLANT</b>	Senior Counsels Ms. Vrinda Grover, and Senior Counsel Mr. Kapil Sibbal
<b>COUNSEL FOR RESPONDENT</b>	<b>Mr. K.K Venugopal, Learned Attorney General of India, and Mr. Tushar Mehta, Solicitor General</b>
<b>INTERVENOR</b>	Senior Counsels Mr. Huzefa Ahmadi, Mr. Dushyant Dave, Ms. Meenakshi Arora, and others
<b>ACTS AND SECTIONS INVOLVED</b>	Fundamental Rights under Part III of the Indian constitution Article 19(1)(a), Article 19(1)(g), Article 21A and restrictions thereof  Restrictions Under Section 144, Code of Criminal Procedure  Other acts and rules  Temporary Suspension of Telecom Services (Public

<b>CASE TITLE</b>	Anuradha Bhasin v. Union of India
<b>CASE NO</b>	Writ Petition (Civil) Nos. 1031 and 1164 of 2019

	Emergency or Public Service) Rules, 2017  Rule 2 (2)  Telegraph Act of 1885  Section 5(2)

## **I. INTRODUCTION**

*Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.*

-Benjamin Franklin

The access or feasibility of connectivity with other people through any technological medium as such was entirely restricted and put forth to pause for many days in a continuous manner. The social distancing and isolation for the residents of Jammu and Kashmir was not just an offline concept but they were poorly isolated from online channels, the motive behind such an action was security which took away various privileges of these people.

Liberty and security have always been at odds. The question before us, simply put, is which is more important: liberty or security? Despite the fact that the choice appears to be difficult. We must move beyond rhetorical platitudes and provide a meaningful response to ensure that every citizen has adequate security and liberty. The pendulum of preference should not swing in either extreme direction so that one preference compromises the other. It is not our expertise to answer whether it is better to be free than secure or secure rather than free. We are only here to ensure that citizens have all of their rights and liberties to the

greatest extent possible in a given situation while also ensuring security.

The enormity of the work in front of this Court makes its duty more difficult in this situation. The steps taken by the government affected people at large, educational institutions, and various essential offices were ordered to remain closed

## **II. FACTS OF THE CASE**

- A. The problem began when mobile, landline and internet services were shut off in the state of Jammu and Kashmir (hence referred to as "J&K") on August 4, 2019<sup>1</sup>, along with travel restrictions in some areas. The Indian government
- B. published Constitutional Order 272 on August 5, 2019. The 2019 Constitution (Application of Jammu and Kashmir) Order abolished J&K's special category status. Section 144 was implemented in response to these conditions when there was suspicion of a breach of state peace and tranquillity. Anuradha Bhasin, the executive editor of Kashmir Time<sup>2</sup> and the petitioner, argued that the restrictions violated her right to freedom of expression and her right to move about as she saw fit under Article 19 of the Indian Constitution<sup>3</sup>.
- C. Ghulam Nabi Azad<sup>4</sup> filed a similar appeal in an effort to have any government orders, notices, directives, or circulars that forbade the use of all or any channels of communication annulled or set aside. In addition, the petitioners asked the court to issue a proper writ ordering respondents to immediately restore all forms of communication in order to create a conducive environment for the media to carry out its work by ensuring the freedom of movement and safety of reporters and journalists in order to allow them to exercise their constitutional rights to freedom of speech and expression. After hearing from attorneys and intervenors from both

<sup>1</sup> Politics, Economic Times

<sup>2</sup> Writ Petition (Civil) Nos. 1031

<sup>3</sup> Ozair Husain V. Union Of India, 2003.

<sup>4</sup> W.P. 1164 Of 2019

petitioners, the two petitions were consolidated, and the matter was listed for the final disposition.

**III. ARGUMENTS IN FAVOUR OF THE APPELLANT:**

- A. It was argued that the Petitioner, as executive editor of one of the major newspapers, was unable to function after 05.08.2019 due to various press restrictions.
- B. Print media came to a halt once more due to the lack of internet services, which she believes is absolutely necessary for the modern press.
- C. Internet censorship is a restriction on the right to free expression and should be judged on the basis of reasonableness and proportionality.
- D. That the freedom of trade and commerce through the internet is protected under Article 19 (1) (g) of the Indian Constitution, subject to certain restrictions set forth in Article 19 (6) of the Indian Constitution.
- E. the learned Counsel contended that the orders are based on a fear of a threat to law and order. Public order is not the same as law and order, and the situation at the time the orders were passed did not warrant the passing of the orders resulting in restrictions.
- F. In another Writ Petition, Mr. Ghulam Nabi Azad, a Member of Parliament (MP) from the state of Jammu and Kashmir, argued the following:
- G. Section 144 restrictions must be imposed on a specific group of people and cannot be applied to the entire state of Jammu and Kashmir.
  1. The government should impose less restrictive measures and balance Indian citizens' Fundamental Rights while maintaining public security.
  2. The imposition of internet restrictions throughout

the state of Jammu and Kashmir affects both freedoms of expression and freedom to engage in any trade, profession, or occupation.

**IV. ARGUMENTS IN FAVOUR OF RESPONDENT:**

- A. The learned Solicitor General contended that the orders issued in Section 144 of the Code of Criminal Procedure allow for preventive measures to be taken in order to protect public safety. The Magistrate can issue an order based on personal knowledge, and this is supposed to be a quick mechanism. The orders issued must be considered in light of the State's history and background.<sup>5</sup>
- B. Regarding the Petitioner's contention that the restrictions could have been imposed on specific individuals, the learned Solicitor General argued that it was impossible to separate and control troublemakers from ordinary citizens in the state of Jammu and Kashmir.
- C. Concerning the communications and internet shutdown, the learned Solicitor General stated that internet access was never restricted in Jammu and Ladakh. He also claimed that social media, which allows people to send messages and communicate with multiple people at the same time, could be used to incite violence. The purpose of the limited and restricted use of the internet is to ensure that targeted messages from outside the country do not aggravate the situation on the ground. Furthermore, the internet allows for the transmission of false news or fake images, which are then used to spread violence. Individuals can easily purchase weapons and illegal substances on the dark web.

<sup>5</sup> Madhu Likhaye v. S.D.M. Monghyr (1970)

## V. ORDER OF THE COURT:

- A. The Court ruled that the State should indeed deliver the orders imposing the restrictions because determining the legality of the restrictions becomes exceptionally challenging in the absence of such orders. States must disclose such data to demonstrate to the Court that a right to remedy exists under Article 32 of the Indian Constitution<sup>6</sup>.
- B. The Court relied on several landmark decisions to reiterate that the right to freedom of expression under Article 19 includes the right to information as an important component. The Court went on to say that "a democracy sworn to transparency and accountability must necessarily mandate the production of orders because it is an individual's right to know." The significance of fundamental rights requires a state to act responsibly in protecting them, and no law should be passed in secret solely on the basis of apprehension of danger.
- C. As a result, the state should ensure that its citizens are informed of any law that restricts their freedom unless a compelling public interest prevails.
- D. The Court reaffirmed that the entitlement to free expression protected by Article 19 pertains to the internet, referencing its extensive case law that had previously extended protection to numerous new media outlets for expression. The Court then held that, despite the use of the internet being protected by the constitution under Article 19, it is still subject to some "reasonable restrictions."

## VI. CONCLUSION

The comprehensive commentary on appropriateness in the judgment was not applied in the instance of the prolonged

shutdown in Kashmir, suggesting that the respondents' arguments regarding terrorist attacks and the state of law and order may have had an influence on the court. Although the Court ruled that permanently banning internet access is unlawful, this ruling was not extrapolated to the situation in Kashmir, where it has been ongoing for more than five months.

The verdict accurately established the law on internet shutdowns, placing a strong focus on the principles of proportionality, necessity, and reasonableness in light of the recent increase in the number of internet shutdowns. Furthermore, the court emphasized citizens' right to know about government actions and struck a balance between citizens' liberties and national security<sup>7</sup>.

## VII. RELATED CASE LAW

- Torture in Israel v. Israel, 38 I.L.M. • 1471 (1999)
- Babulal Pa rate v. State of Bombay AIR 1960 SC 51 & Madhu Limaye v. Sub-Divisional Magistrate, Monghyr, 3 SCC 746.
- National Investigation Agency v. Zahoor Ahmad Shah Watali
- Liversidge v. Anderson, (1941) 3 All ER 338
- Ram Jethmalani v. Union of India, (2011) 8 SCC 1
- K.S. Puttaswamy v. Union of India, (2017) 10 SCC
- Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410
- Indian Express v. Union of India, (1985) 1 SCC 641
- Abraham v. United States, 250 US 616 (1919)
- Chintaman Rao v. State of Madhya Pradesh AIR 1951 SC 11J
- Mohammed Faruk v. State of Madhya Pradesh(1969) 1 SCC 853
- Om Kumar v. Union of India, (2001) 2 SCC 386
- Mohd. Hanif Qureshi v. State of Bihar: AIR 1958 SC 731
- Minerva Mills Ltd • v. Union of India,(1980) 2 SCC 591
- Liversidge v. Anderson, (1941) 3 All ER 338

<sup>6</sup> 1951 AIR 270

<sup>7</sup> Rajiv Suri v. Delhi Development Authority, 2021 SC 7

Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. (1983) 1 SCC 147  
Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal,  
Abraham v. United States, 250 US 616 (1919),  
State of Bihar v. Kamla Kant Mishra, (1969) 3 SCC 337  
Re-Ramlila Maidan Incident Dt vs Home Secretary and Ors on 23. 02, 2012

<b><u>REFERENCE</u></b>
-------------------------

- B. R. Sharma, Freedom of the press under the Indian Constitution ISBN-10 8171005047
- Martin Shapiro, Freedom of Speech: The Supreme Court and Judicial Review, ISBN:9781458196866
- R.V Kelkar, Criminal Procedure
- C.K. Takwani, Criminal Procedure, LexisNexis
- Justice Y V. Chandrachud, V.R. Manohar, Ratanlal & Dhirajlal, Ratanlal and Dhirajlal. The Code o Criminal Procedure 20th Edition, LexisNexis/ Butterworth
- K.N. Chandrasekharan Pillai, R.V. Kelkar's Lectures on Criminal Procedure, 4th Edition. Reprod 2011(EBC)
- .SC. Sarkar, Sarkar on the Law of Criminal Procedure, LexisNexis Butterworths