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## ANURADHA BHASIN V. UNION OF INDIA: A CASE ANALYSIS

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### FACTS AND BACKGROUND

In August 2019 the State of Jammu & Kashmir imposed extensive protective measures. On August 4, all services, like internet, landline telephones & mobile networks, were suspended in the J&K. On August 5, the next day, President's Order 272 extended the full Constitution to J&K, and District Magistrates imposed curfews under Section 144, Cr.P.C. These impositions effectively restricted and muted all the journalists of J&K. The Srinagar edition of the *Kashmir Times* could not be printed or distributed due to this restriction.<sup>1</sup>

In response, two petitioners, Ms. Anuradha Bhasin, *Executive Editor of Kashmir Times*, and Mr. Ghulam Nabi Azad, moved the Supreme Court under Article 32. They sought writs quashing all orders that had shut down the online service, Internet, mobile, and other communications in any locality and restoring these services state-wide. They argued that the shutdown violated fundamental rights.<sup>2</sup>

Mr. Azad separately claimed that the travel restrictions prevented him from reaching his constituents. The petitions thus raised urgent questions about protective and security measures, transparency of executive orders, and the scope of Articles 19(1)(a) and (g) under a communications shutdown.

### ISSUES

The Court extracted five measure questions from the pleadings<sup>3</sup>:

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<sup>1</sup> AIR 2020 SC 1308, para 4.

<sup>2</sup> *Id.* at para 8(b).

<sup>3</sup> *Id.* at 19.

1. whether the State could withhold publication or production of its Section 144 and telecom suspension orders?
2. whether speech, expression and business over the Internet fall under Part III fundamental rights?
3. whether the blanket Internet shutdown was legally valid?
4. whether the Section 144 orders were legally valid? and
5. whether the shutdown encroached press freedom of the *journalist*, petitioner? The case has a classic liberty-security balance, examining both procedural fairness and substantive rights, speech or internet access versus public order.

#### **PETITIONERS' ARGUMENTS<sup>4</sup>**

The petitioners emphasized that the communications shutdown unlawfully hamper freedom of speech and of the press. They contended that Internet access is now an integral part of expression and commerce, Article 19(1)(a) *speech* and 19(1)(g) *trade*. Counsel pointed out that the petitioner journalist could not gather or circulate news (the *Kashmir Times* could not circulate for months) and it is directly impeding her profession. They maintained that any restriction on online speech must satisfy the Article 19(2) and (6) tests which are reasonable restriction and proportionality and that the State had not even arbitrarily attempted to do so. Petitioners stressed that many orders on procedure, Section 144 and telecom orders, were never formally published or placed on record, violating principles of notice and transparency.

Referring *Ram Jethmalani v. UOI*, they argued it is vital in a fundamental rights petition that petitioners “are not denied the information necessary for them to properly articulate the case”. In other words, unannounced orders carry no legal force: the people and courts have a “right to know” the grounds for any such restrictions.

#### **RESPONDENTS' ARGUMENTS<sup>5</sup>**

The Union and State defended the ban as an important security response. The Solicitor General emphasized the history of terrorism in J&K and described the shutdown as needed to prevent inciting the situation. He explained that the Internet, unlike traditional press, enables rapid two-way communication and mass spread of ‘targeted messages’ and rumours that can provoke violence. Social media used to spread misinformation and even procure weapons via the dark web. Thus, any unrestricted social media flow posed a ‘clear and present danger’ a contagion

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<sup>4</sup> *Id.* at 10- 127.

<sup>5</sup> *Ibid.*

of unrest warranting temporary restrictions. The SG further argued that newspapers differ fundamentally from online media, and that jurisprudence on print press cannot be mechanically applied to the Internet.

The State maintained that the suspension orders were issued in accordance with the Suspension Rules, and that the Reviewing Committee was evaluating them every day. Intervenors supporting the Government sounded these themes and maintaining that the restrictions had achieved stability and that the petitions themselves were not maintainable in the given circumstances.

### **COURT'S REASONING AND JUDGEMENT<sup>6</sup>**

The Court reasonably balanced liberty and security. Invoking the task of ensuring 'adequate security and sufficient liberty', it ultimately exonerated most of the petitioners' concerns while recognizing security point of view as legitimate. Firstly, the Court rejected the State's claim to privilege on procedural fairness. It directed the J&K authorities to *publish all existing orders and any future orders* issued under Section 144 or the Telecom Suspension Rules, so that affected persons can challenge them in court. Referring *Ram Jethmalani*, it held that democracy "necessitates the production of orders as it is the right of an individual to know".

Substantially, the Court declared that use of Internet is constitutionally protected. It held that the 'freedom of speech and expression' and the right to conduct trade or profession 'over the medium of internet' claim protection under Articles 19(1)(a) and 19(1)(g), so this was a significant affirmation that the Court recognised online expression into the Article 19 framework. Similarly, any restriction on Internet access must obey the ordinary Article 19(2) and (6) limits. So any shutdown must be justified by law and proportionate to the threat.

The Court ruled that an unspecified suspension of Internet service is *impermissible* under the 2017 Suspension Rules. Suspension must be for a temporary, circumscribed duration with periodic review. Indeed, the Court ordered that the Review Committee meet at most every 7 days (Rule 2(6)) and that all extant suspension orders be promptly reviewed.

The judgment also reaffirmed well-settled law on Section 144. It reprise that Section 144 orders are preventive in nature not punitive, but they can be applied to prevent impending danger. Such orders must be fact-specific and bona fide and reasonable, recording the material circumstances on which they rest. A Magistrate must apply Section 144 as a 'least intrusive

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<sup>6</sup> *Id.* at 127.

measure,' balancing rights and restrictions through proportionality. Orders not complying with these norms must be void. These detailed guidelines aim to guard against arbitrary curfews and constrain transparency.

The Court reiterated that journalists enjoy no special privilege beyond Article 19(a) on press freedom. It cited the Privy Council in *Channing Arnold v. Emperor* (1914) to emphasize that 'the freedom of the journalist is an ordinary part of the freedom of the subject'. In simpler terms, free press is very important to democracy but is contained under general free speech. The Court emphasized the weakening effect of the shutdown had on newsgathering and publication, implying that such collateral press-harm must factor into any restriction analysis.

### **CRITICAL ANALYSIS**

The Anuradha Bhasin decision is a landmark affirmation of digital speech rights under our Constitution. By expressly extending Article 19 protections to Internet communication, the Court filled a critical legal gap in the digital era. The insistence on publishing all executive orders and enabling judicial review represents an uncompromising stance on transparency. This remedy addresses a practical concern: without seeing the actual orders, citizens and courts cannot meaningfully assess the legality of restrictions. The prescription of a "least intrusive measure" and periodic reviews reflects a proportionality approach that balances security imperatives against individual freedoms.

At the same time, the judgment carefully carved space for legitimate state action. It did not rule the shutdown absolutely unlawful; rather, it held that the State must justify each step through transparent, reasoned orders that pass constitutional muster. By allowing restriction under Article 19(2)/(6) conditions, the Court implicitly recognized that free speech can be lawfully curtailed in an emergency (subject to strict criteria). The Court's language – for example, requiring "apprehension of danger" and an "emergency" to trigger Section 144 – reaffirms traditional law-and-order principles as in *Babulal Parate*.

In its critical thrust, the Court admonished that even in counter-terror contexts, the State cannot dispense with fundamental safeguards. The directions limiting indefinite Internet suspension and mandating reviews do create practical challenges; for instance, frequent publication and judicial validation of dozens of orders (many of them evolving daily) will demand administrative discipline. Nevertheless, these measures impose meaningful checks on executive power. By refusing to defer wholesale to military or executive assertions ("not to be replaced by the opinion of the courts"), the Court upheld its role as guardian of rights.

The judgment's emphasis on balancing is also noteworthy. Ramana J. articulated that this Court's "limited scope is to strike a balance between liberty and security concerns". This balancing act is evident: the Court neither unleashed absolute liberty (it preserved lawful restriction) nor yielded to unchecked security zeal (it imposed strict conditions). In so doing, the opinion aligns with international proportionality norms, ensuring that any limitation is "designed for a proper purpose" and uses the least intrusive means (as per cited theory).

One might critique that the Court did not fully confront the constitutional validity of public emergencies or Section 370 changes – it expressly abstained from political issues, focusing strictly on rights. But this self-limiting scope underscores judicial restraint and acknowledges domain separation between law and politics. In essence, *Bhasin* solidifies the principle that even extraordinary security measures must be judicially reviewable and factually grounded. It sets precedent for future shutdowns: any blanket cut-off is presumptively impermissible unless the State follows the stated rules. In conclusion, *Anuradha Bhasin* is a detailed and nuanced verdict that robustly protects digital rights and press freedoms, while allowing narrowly tailored restrictions in the face of genuine threats. Its academic approach to proportionality and transparency will likely guide courts in balancing rights and security for years to come.