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# Anuradha Bhasin v. Union of India 2020: Navigating Civil Liberties and National Security in the Digital Era

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## ABSTRACT

*This paper critically examines the jurisprudential evolution of digital rights within India's constitutional framework through the landmark case Anuradha Bhasin v. Union of India (2020). Following the constitutional restructuring of Jammu and Kashmir, the Supreme Court's intervention addressed fundamental questions regarding state power, democratic freedoms, and security imperatives in the digital age. The Court's reasoning, anchored in the doctrine of proportionality, establishes a novel framework for evaluating internet restrictions while expanding the scope of Articles 19(1)(a) and 19(1)(g). Although the judgment stops short of establishing internet access as a fundamental right, it significantly advances the discourse on digital constitutionalism by mandating procedural safeguards, governmental transparency, and periodic review of restrictive measures. This judicial intervention not only recalibrates the security-liberty paradigm but also contributes to the emerging global jurisprudence on digital rights.*

**Keywords:** *Digital constitutionalism, proportionality doctrine, fundamental rights jurisprudence, internet governance, securitization theory, democratic accountability, judicial review, constitutional law, telecommunications regulation.*

## I. INTRODUCTION

The Anuradha Bhasin v. Union of India case <sup>2</sup> is an important case in the evolution of constitutional law in India. It deals with the intersection of civil liberties and national security in the digital age. The case arose due to a political and constitutional shift in Kashmir. It involved the revocation of Article 370,<sup>3</sup> which had granted special autonomy to the erstwhile state of Jammu and Kashmir. This event, which took place on August 5, 2019, fundamentally changed the governance structure of the region, after which the state was bifurcated into two Union Territories: Jammu and Kashmir, and Ladakh. The abrogation of Article 370 was a historic legislation, but it witnessed a lot of security measures that were both far reaching and

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<sup>2</sup> Writ Petition (Civil) No. 1031 of 2019. The judgment was delivered on January 10, 2020.

<sup>3</sup> Jammu and Kashmir Reorganisation Act, 2019.

extraordinary.

The government's decision to revoke Article 370 stemmed from its long-standing objective to achieve complete integration of Jammu and Kashmir with the Indian Union. This action was defended as a crucial step to promote development, enhance governance, and tackle security threats posed by cross-border terrorism and internal militancy. Acknowledging the region's complex history marked by conflict, insurgency, and political turmoil, the government anticipated significant resistance from parts of the population and separatist groups. To prevent unrest and ensure public order, a set of strict measures was introduced, including:

1. *Total Communication Shutdown*: The government imposed a complete blackout on all forms of communication. This included suspending internet services, mobile networks, and even landline connections, effectively cutting off the region from the rest of the country and the world. The communication shutdown was one of the longest ever implemented in a democratic nation, drawing widespread criticism and raising questions about the balance between security and fundamental rights.<sup>4</sup>
2. *Restrictions under Section 144, CrPC*: The authorities used Section 144 of the Criminal Procedure Code (CrPC), which gives district officials the power to ban public gatherings and enforce curfews. In this instance, Section 144 was widely applied to restrict people's movement and prevent public assemblies in many areas. However, these orders faced criticism for being too broad, impacting not only those who might cause trouble but also everyday people trying to carry out their usual activities.
3. *Closure of Educational Institutions*: Schools, colleges, and universities were ordered to shut down. This action not only disrupted the education of thousands of students, but also impacted the mental and psychological well-being of children and youths.

The widespread and long-lasting restrictions raised serious concerns among civil society groups, human rights activists, legal experts, and international organizations. Many critics argued that the communication shutdown and movement restrictions seriously violated fundamental rights protected by Part III of the Indian Constitution. The right to freedom of speech and expression (Article 19(1)(a)) was heavily restricted, and the right to work in any profession, trade, or business (Article 19(1)(g)) was especially harmed for people who needed internet access to make a living. The right to life and personal liberty (Article 21) was also affected, as important services like healthcare and education were disrupted.

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<sup>4</sup> Human Rights Watch, "No Internet Means No Work, No Pay, No Food: Internet Shutdowns Deny Access to Basic Rights," June 14, 2023.

Globally, the shutdown drew criticism and placed India in the spotlight, with prominent human rights organizations like Amnesty International and Human Rights Watch criticizing the measures as disproportionate and excessive.<sup>5</sup>

## II. CONTENTIONS AND ARGUMENTS BEFORE THE SUPREME COURT

The *Anuradha Bhasin v. Union of India* case saw extensive arguments from both sides, involving fundamental questions about the balance between national security and civil liberties, the scope of fundamental rights, and the legality of using blanket restrictions.

### (A) *Petitioners' Contentions and Arguments*

Anuradha Bhasin, the Executive Editor of Kashmir Times, filed a petition in the Supreme Court. She argued that the communication ban had paralyzed press freedom, leaving journalists unable to cover developments in the region. The suspension of the newspaper's Srinagar edition, due to the internet blackout, highlighted the issues associated with the shutdown internet. Bhasin argued that the right to free speech and expression, fundamental to a functioning democracy, was being unjustly curtailed.

Ghulam Nabi Azad, a prominent political figure and former Chief Minister of Jammu and Kashmir, also submitted a petition challenging these restrictions. Azad claimed that the measures had severely disrupted the lives of ordinary residents, especially daily laborers, farmers, and small business owners, who were unable to access markets, engage in trade, or move freely. He highlighted that these restrictions infringed on individual rights and weakened democratic accountability by hindering communication between elected representatives and citizens.

### **Key arguments of the petitioners.**

#### *1. Violation of Fundamental Rights:*

##### a) Freedom of Speech and Expression (Article 19(1)(a)):

The petitioners claimed that the communication blackout, especially the internet shutdown, was a direct and excessive violation of the right to freedom of speech and expression. Anuradha Bhasin argued that the internet is crucial for modern journalism. Without it, the media cannot properly gather or share news. She pointed out that the Kashmir Times could not publish its Srinagar edition, showing how press freedom was seriously affected. Bhasin stressed that a free press is essential for democracy, especially in conflict areas, as independent reporting keeps the

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<sup>5</sup> Amnesty International, "J&K special status: Amnesty International cautions Centre on human rights violations in state," Scroll.in, August 5, 2019

public informed.

b) Right to Practice Profession or Trade (Article 19(1)(g)):

The petitioners argued that the restrictions had a serious impact on economic activities. Ghulam Nabi Azad pointed out that small businesses, farmers, and daily wage workers could not earn a living because of the communication and movement bans. The internet shutdown disrupted commerce, banking, and education, making it impossible for people to carry on with their work and businesses. E-commerce and businesses that depended on digital transactions were also affected, causing significant harm to the region's economy.

2. *Doctrine of Proportionality and Reasonableness:*

The petitioners argued that the government's restrictions were too harsh and did not follow the principle of proportionality, a key constitutional rule. This principle says that any limit on a fundamental right must be necessary, reasonable, and the least restrictive option possible to achieve the goal. They pointed out that the government did not explain why less extreme measures could not have been used.

For instance, instead of shutting down the entire internet, the government could have blocked only specific social media platforms if the aim was to stop rumors or prevent violence. The petitioners also noted that the restrictions were indefinite and did not have a clear timeline or regular review, which went against the principle of proportionality.

3. *Misuse of Section 144, CrPC:*

The petitioners argued that the government's extensive use of Section 144 of the Criminal Procedure Code (CrPC) to limit movement and public gatherings was legally not justified. Section 144 is meant to prevent threats to public order in specific and urgent situations. The petitioners said the government had used it to impose broad restrictions on the entire region without a valid reason. They also argued that Section 144 should not be used for long periods without review and should not be applied in a way that restricts the fundamental rights of everyone. The petitioners claimed that using Section 144 in this way was an abuse of state power.

4. *Lack of Transparency and Non-Publication of Orders:*

They claimed that the government did not publish the orders of the internet shutdown and movement restrictions. This lack of transparency violated natural justice and the right to information, which is an important part of the right to free speech and expression. In a democracy, the government must be transparent, especially when limiting fundamental rights.

They demanded that the government should make public all orders related to these restrictions.

### *5. Impact on Press Freedom:*

Anuradha Bhasin argued that the communication restrictions directly targeted the press and made it difficult for journalists to report freely. She pointed out that the inability to gather and share information violated the basic principles of a free press. She asked the court to create guidelines to protect press freedom in these situations.

### ***(B) Respondents' (Government) Contentions and Arguments***

The government, represented by the Attorney General and the Solicitor General, defended the restrictions by emphasizing national security concerns. The respondents argued that the measures were necessary, proportionate, and legally justified to maintain public order and prevent violence.

#### *1. National Security and Public Safety:*

The government's main argument was that the restrictions were necessary to protect national security and ensure public safety in a region that was highly unstable and sensitive. The removal of Article 370 was a major political decision, and the authorities expected significant violence and protests. The AGI pointed out that J&K had a history of cross-border terrorism and internal violence. In this context, they argued that, to prevent a breakdown of law and order the government imposed the restrictions that has helped prevent violence and saved lives.

Citing examples of past incidents of unrest, such as the 2016 protests<sup>6</sup> following the killing of a militant leader, the government stressed that the situation demanded extraordinary measures.

#### *2. Temporary and Gradual Relaxation of Restrictions:*

The government contended that the restrictions were temporary and subject to regular review. The Solicitor General argued that the authorities were gradually lifting the restrictions as the situation improved. By the time the case was being heard, some landline and mobile services had been restored, and movement restrictions had been relaxed in many areas.

The government argued that this gradual easing of restrictions showed that the measures were not meant to be permanent or random, but were carefully put in place to ensure public safety.

#### *3. Use of Section 144, CrPC:*

The government defended the use of Section 144, arguing that it was a preventive measure

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<sup>6</sup> The 2016 unrest in Kashmir was triggered by the killing of militant leader Burhan Wani by Indian security forces, leading to widespread protests and violent clashes between civilians and the police.

meant to maintain public order and prevent violence. The Solicitor General pointed out that the district magistrates had the authority to assess the ground realities and impose restrictions accordingly. Given the scale of the security threat, a comprehensive approach was necessary.

The respondents contended that the use of Section 144 was justified, as the situation involved threats not only to law and order but also to the security and integrity of the nation. The government argued that the magistrates acted in good faith and had the expertise to make decisions in the interest of public safety.

#### 4. *Claim of Privilege and Non-Disclosure of Orders:*

When questioned about why the orders for the restrictions were not made public, the government first claimed that certain information could not be shared because of national security concerns. However, they later agreed to show some sample orders in court. The government insisted that while transparency is important, there are exceptions when sharing information could threaten national security. The respondents argued that the court should trust the government's judgment in sensitive situations, especially given the complexities of security in Jammu and Kashmir.

#### 5. *Impact on Fundamental Rights:*

The government acknowledged that fundamental rights are important but argued that they are not absolute and can be limited for national security reasons. The Attorney General referred to previous cases to support the idea that reasonable restrictions on free speech and movement are allowed under Articles 19(2) and 19(6) of the Constitution.

The government emphasized that the right to life and personal safety of citizens is more important than the rights to free speech and movement. It argued that when public order and national security are at risk, the state has a responsibility to impose restrictions to protect lives.

### III. ISSUES BEFORE THE SUPREME COURT <sup>7</sup>

1. *Production of Orders and Transparency* : Whether the government is obligated to produce and make public all orders related to the restrictions, such as those imposing the internet shutdown and prohibitory orders under Section 144 of the CrPC.
2. *Freedom of Speech and Expression Over the Internet* : Whether the freedom of speech and expression, as guaranteed under Article 19(1)(a) of the Constitution, includes the right to use the internet as a medium of communication, and whether the restrictions on

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<sup>7</sup> Part C, Para 10 of the Judgement

internet access violated this right.

3. *Validity and Scope of Internet Shutdowns*: Whether the government's imposition of a complete and indefinite internet shutdown in Jammu and Kashmir was constitutionally valid and whether the suspension complied with the principles of proportionality and necessity.
4. *Application and Legality of Section 144, CrPC* : Whether the use of Section 144 of the Criminal Procedure Code (CrPC) to impose movement restrictions and curfews across large parts of Jammu and Kashmir was valid and in line with constitutional requirements.
5. *Freedom of the Press and Impact on Journalistic Activities* : Whether the restrictions on communication and movement infringed on the freedom of the press as protected under Article 19(1)(a) of the Constitution.

#### IV. ANALYSIS OF THE JUDGEMENT

The case was decided by a three-judge bench of the Supreme Court of India, comprising Justices N.V. Ramana, R. Subhash Reddy, and B.R. Gavai. There was no dissent in the judgment and the bench unanimously upheld certain aspects of the government's restrictions but also imposed significant limitations on the use of these restrictions.

##### 1) *Right to Internet as a Part of Freedom of Speech and Trade*:<sup>8</sup>

The Court recognized that the freedom of speech and expression under Article 19(1)(a) and the right to carry on trade and business under Article 19(1)(g) include the use of the internet. The judgment emphasized that access to the internet is crucial for exercising these rights. However, it did not declare internet access as a fundamental right in itself but affirmed that any restrictions on internet access must adhere to constitutional requirements.

##### 2) *Restrictions on Internet Access*:

The Court held that while the government has the power to impose restrictions under the Temporary Suspension of Telecom Services Rules, 2017 (Suspension Rules), these restrictions should be *temporary, necessary, and proportionate*<sup>9</sup> The Court found that blanket internet shutdowns without adequate review were disproportionate. It directed the government to review these restrictions regularly and ensure that any continuation of the shutdown should be justified by specific reasons related to security.

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<sup>8</sup> Para 152.b of the Judgement

<sup>9</sup> Para 152.d of the Judgement



3) *Validity of Orders Under Section 144 of the Criminal Procedure Code (CrPC):*

The Court examined the restrictions imposed under Section 144, CrPC, which allows authorities to prevent public disturbances by imposing prohibitory orders. It ruled that Section 144 cannot be used indefinitely and must be based on an actual assessment of the necessity for public safety and order. The Court also stated that such orders should be specific, rather than broad or vague, and need to be supported by evidence.

4) *Transparency and Publication of Orders:*

The Court highlighted the importance of transparency, directing that all orders imposing restrictions under Section 144 and the Suspension Rules must be published. This enables affected individuals to challenge the legality of such orders. Without this, the Court observed, the affected parties would be deprived of their right to judicial review.

5) *Impact on Freedom of the Press:*

The Court recognized the major impact of the shutdown on press freedom in Jammu and Kashmir, especially for journalists who depend on internet services. It stated that freedom of the press is crucial in a democracy, and excessive restrictions on the press violate the right to free speech. The Court urged the need to balance national security concerns with journalists' rights to access information and report freely.

## **V. IMPLICATIONS OF THE JUDGEMENT**

The judgment by the Supreme Court of India has several significant implications across multiple dimensions.

Firstly, The judgment sets a precedent for judicial intervention in instances of government-imposed restrictions on fundamental rights, particularly during periods of emergency or perceived threats to security.

Secondly, By recognizing internet access as integral to freedom of speech (Article 19(1)(a)) and the right to trade (Article 19(1)(g)), the judgment paves the way for future cases where digital restrictions may be challenged. This underscores a growing recognition of internet access as essential in modern society. The ruling implicitly strengthens the right to digital expression by affirming the internet's role in free speech.

Thirdly, By recognizing Proportionality and Necessity as Key Tests, the Court emphasized that any restriction on rights must meet the tests of necessity, reasonableness, and proportionality. This has broader implications for all cases involving state-imposed restrictions on fundamental rights.

Fourthly, by Recognizing that businesses rely heavily on internet access, the judgment underscores the economic costs of shutdowns. By making arbitrary internet restrictions more challenging, the judgment indirectly supports the interests of e-commerce, financial services, and various sectors of the digital economy that depend on uninterrupted internet access.

Similarly, The ruling sends a positive signal to international investors, as it suggests that India's legal system is conscious of the impact of internet restrictions on business and is prepared to uphold rights that protect economic activities.

Fifthly, The Court's directive for all orders under Section 144 of the CrPC and the Suspension Rules to be published marks a shift towards greater government transparency. This requirement strengthens the rule of law by ensuring that citizens have the opportunity to challenge the legality of restrictive orders.

Sixthly, The Court's concern about the impact on the press signals an awareness of the media's role in a democracy enhancing Press Freedom in Conflict Zones. Restrictions that affect journalistic freedom are now subject to heightened scrutiny. This decision may empower journalists to challenge future restrictions that impede reporting.

Moreover, By ensuring that people have access to information through the internet, the judgment reinforces democratic discourse. In a democratic society, access to the internet facilitates free and open debate, which is essential for holding the government accountable. Additionally, This judgment has raised awareness of the importance of digital rights and the conditions under which the government can limit them. It may encourage citizens to be more vigilant about their rights and more active in opposing arbitrary restrictions, and act as whistleblowers in case of excessive interference.

Notably, The ruling aligns India with global trends toward viewing internet access as a basic human right. In doing so, the judgment not only enhances protections within India but also positions India as a more progressive player in international conversations on digital rights and freedoms

Finally, The judgment may serve as a model reference for other democracies facing challenges in balancing civil rights and national security in the digital age. As shutdowns are used in many countries facing unrest, the principles of proportionality and necessity outlined in this case could inspire similar rulings elsewhere.

## **VI. LIMITATIONS AND CRITICISM OF THE JUDGEMENT**

While the Anuradha Bhasin judgment by the Supreme Court of India was a landmark ruling on

digital rights and government restrictions, it has faced criticism for several aspects that were overlooked or could have been strengthened.

- a. Although the Court acknowledged that freedom of speech and expression (Article 19(1)(a)) and the right to trade (Article 19(1)(g)) apply to the internet, it stopped short of explicitly recognizing internet access as a fundamental right. It is argued that in today's digital era, internet access should be declared a standalone right, especially as many essential services and democratic processes now rely on it.
- b. The Court ruled that shutdowns should be temporary, proportionate, and regularly reviewed. However, it did not create clear ways to enforce these standards. There are no specific penalties for authorities that do not comply, and the judgment did not specify consequences for issuing overly broad or long-lasting restrictions. This lack of accountability may allow authorities to keep imposing shutdowns without facing any consequences.
- c. The Court upheld the use of Section 144 of the CrPC, and the judgment did not clearly define the Specific Restrictions on Section 144 such as the scope or duration for the orders. Critics point out that orders under this section can often lead to misuse by local authorities, resulting in prolonged restrictions without rigorous oversight. For instance, Section 144 has sometimes been imposed on entire districts or states, a practice which violates citizens' fundamental rights.
- d. The Court accepted the necessity of some government orders without requiring substantive evidence of their impact. This reliance on government assurances without an independent review committee could be seen as setting a concerning precedent. The judgment could have recommended the establishment of an independent committee or judicial body to review internet shutdown orders, ensuring an unbiased assessment of the necessity and proportionality of government actions.
- e. The judgment did not address how internet restrictions disproportionately impact certain regions or communities, especially in conflict-prone areas like Jammu and Kashmir, where such restrictions are more frequent. Prolonged shutdowns affect regional economies, social integration, and democratic participation, particularly for marginalized communities.
- f. The Court refrained from recommending broader reforms to internet governance in India, which could have included guidelines on digital rights protection, emergency internet access provisions, or internet infrastructure safeguards.

- g. While the Court invoked proportionality as a test, it did not apply it rigorously. In cases involving fundamental rights, the proportionality test requires a detailed examination of alternative measures. In this case, it could have been restricting specific websites or social media platforms rather than a blanket suspension of services and an assessment of their potential impact. However the Court left open the possibility of future shutdowns being imposed without rigorous consideration of less restrictive options.

## VII. CONCLUSION

In conclusion, *Anuradha Bhasin v. Union of India* ruling is an important turning point, especially when it comes to balancing individual rights and national security in the digital world. The Supreme Court stressed the need for transparency, proportionality, and regular checks on restrictions, reminding the government of its duty to protect democratic values even when security is a concern. Supreme court recognized the importance of internet for free speech, commerce, and press freedom. This decision acts as a legal protection, ensuring that the government follows constitutional rules and prioritizes people's freedoms

As web inventor Tim Berners-Lee stated, *"It's time to recognize the internet as a basic human right. That means guaranteeing affordable access for all, ensuring internet packets are delivered without commercial or political discrimination, and protecting the privacy and freedom of web users regardless of where they live."*<sup>10</sup> This ensures that everyone has affordable access to the internet while also protecting users' privacy and freedom and the judgment supports this idea.

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<sup>10</sup> Tim Berners-Lee, "Internet Should Be a Human Right," *India Today*, December 11, 2014,

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