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**“ILLEGALITY OF INTERNET SHUTDOWNS IN THE WORLD’S  
LARGEST DEMOCRACY: INDIA.”**

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**I. INTRODUCTION:**

The usage of the word democracy generally bears witness to a form of government where people supervise the authority of the government. In the largest democracy of the world, India, the word democracy holds synonymity to the phrase, “*we the people, for the people, by the people*”. Taking into consideration what “Freedom” really means to a country like this, indefinite Internet shutdowns have been on an unprecedented rise. Now typically what does an Internet Shutdown entail? Internet shutdown is a deliberate interference of Internet-based connectivity, making it unreachable or successfully inaccessible for a given population, de Internet is increasingly becoming a fundamental part of our lives and it is a platform where one can exercise his/her freedom of speech and expression. However, recently India has been subjected to unfair and indiscriminating shutdowns by the State.<sup>1</sup>

In furtherance of this, according to the Deloitte report, India has had a total of 106 Internet shutdowns in the year 2019. Further, India has had a total of 156 Internet shutdowns between the years 2016 and 2018, being the first country to do so.<sup>2</sup>

<sup>1</sup> Policy Brief: Internet Shutdowns, INTERNET SOCIETY (2020), <https://www.internetsociety.org/policybriefs/internet-shutdowns> (last visited Apr 30, 2020).

<sup>2</sup> Ibid

## **II. CASE LAWS ON RIGHT TO INTERNET:**

The Supreme Court of India in its landmark judgment asserted that Right to Internet comes under the purview of Article 19(1)(a) of the Constitution of India – Right of Freedom of Speech and Expression. In addition to this, the shutdowns are in grave violation of Article 19(1)(g) of the Constitution – Right to practice or carry on any trade or profession.<sup>3</sup> Hence, conclusively indefinite periods of shutdowns violate the aforesaid articles of the Constitution. Additionally, SC also makes sure to notify that Government of the country can use the tool of Internet shutdowns as a last resort. However, if the government at any point does find itself in a quandary, it shall issue an order specifying the rules of the shutdown alongside its duration well before the implementation of the same.<sup>4</sup> “<sup>5</sup>The Court furthered that Internet can only be curbed or limited plausibly in view of the Articles 19(2) and 19(6) which mandate that the Government to enforce, by statute, fair constraints on the freedom of speech and expression “in the interests of ... public order.” Aphoristically, The SC says that Section 144 of the code of Criminal procedure gives the government the power to issue orders to regulate law and order. This comes in handy to prevent any illegal gathering. More importantly, the Court said that there shouldn’t be despotic or arbitrary misuse of power.<sup>6</sup> This Judgment, however, didn’t settle well with the executive in the country.

## **III. THE RECENT CASE OF INTERNET SHUTDOWN IN J&K:**

India, despite being the largest democracy of the world, has the maximum number of Internet shutdowns, with 106 shutdowns in the year 2019. 67% of the world’s documented shutdowns took place in India last year<sup>7</sup>. The year 2019 was marked by the substantial suspension of Internet services in Jammu and Kashmir, which started on August 5, 2019, attributing to the

<sup>3</sup> Apoorva Mandhani, Mohana Basu & Kritika Sharma, 'MUST BE TEMPORARY' - WHAT SUPREME COURT JUDGMENT SAYS ON KASHMIR INTERNET SHUTDOWN THEPRINT (2020), <https://theprint.in/judiciary/must-be-temporary-what-supreme-court-judgment-says-on-kashmir-internet-shutdown/347772/> (last visited Apr 30,

<sup>4</sup> Ibid

<sup>5</sup> Supra note 1 at 4

<sup>6</sup> Id

<sup>7</sup> Asmita Bakshi, INDIA IS THE INTERNET SHUTDOWN CAPITAL OF THE WORLD LIVEMINT (2019), <https://www.livemint.com/mint-lounge/features/inside-the-internet-shutdown-capital-of-the-world-11575644823381.html> (last visited Apr 30, 2020).

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revocation of Article 370 and continued for about 150 days up to March 4, 2020. Article 370 — which comes under Part XXI of the Constitution, which deals with "Temporary, Transitional and Special provisions" — grants J&K a special autonomous status. Constitutional provisions that are applicable to other Indian states are not applicable to J&K.<sup>8</sup> Article 370 of the constitution of India provided a separate set of laws to govern the people of Jammu and Kashmir, unlike the other States.

It included laws relating to ownership of property, citizenship and other fundamental rights of the people. An Indian citizen from any other State was not allowed to purchase land, property in Kashmir according to the laws of Jammu and Kashmir. Apart from giving the State a degree of autonomy, the new provisions limited Parliament's powers to make laws for the State. It allowed India only to control three subjects— defense, external affairs and communication.<sup>9</sup> Article 35A of the Indian Constitution, which stemmed out of Article 370, gave powers to the Jammu and Kashmir Assembly to define permanent residents of the State, their special rights and privileges.<sup>10</sup> With the scrapping off Article 370, the people of Jammu and Kashmir lost all their special privileges under that article and were treated just like any other Indian State. Due to this decision by the Indian government, there was huge chaos among the people of Kashmir. India had deployed thousands of soldiers in the Kashmir valley in order to control the situation if there was a backlash of a revolt. The Indian government had also passed orders to ban all public movement in that region and shut down educational institutions like schools and colleges. The two former chief ministers of Jammu and Kashmir, Omar Abdullah and Mehbooba Mufti had been detained and put under house arrest, the day the article was scrapped off. Both of them were detained as they had expressed their views on social media stating whatever was being done by the Indian Government was completely undemocratic and this was authoritarianism. The mobile and Internet services in

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<sup>8</sup> ET Online, ARTICLE 370 AND 35(A) REVOKED: HOW IT WOULD CHANGE THE FACE OF KASHMIR THE ECONOMIC TIMES (2019), <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms?from=mdr> (last visited Apr 30, 2020).

<sup>9</sup> Chandrajit Mitra, MODI'S BOLD DECISION TO SCRAP ARTICLE 370 CAN LEAD TO CHAOS, CONSTITUTIONAL CRISIS THE FEDERAL (2019), <https://thefederal.com/analysis/modis-bold-decision-to-scrap-art-370-can-lead-to-chaos-constitutional-crisis/> (last visited Apr 30, 2020).

<sup>10</sup> Pti, EXPLAINER: WHAT IS ARTICLE 370? @BUSINESSLINE (2019), <https://www.thehindubusinessline.com/news/national/explainer-what-is-article-370/article28822446.ece> (last visited Apr 30, 2020).

the region were suspended since the revocation of the article and satellite phones were being used by the security personnel. The Indian Government had banned the facility of the Internet in the region so that those people could not tell about the situation they were facing there. The people lost their only platform of exerting their rights of freedom and expression.

“The Judgment in *Anuradha Bhasin v. Union of India*, provides a sound legal basis to challenge future communication shutdowns but it does little to address the harm already caused to Kashmiris in the last 158 days.” In this case, the Court concluded “*The power under section 144, Cr.P.C cannot be used to suppress the legitimate expression of opinion or grievance or exercise of any democratic rights*”<sup>11</sup>. Although the ultimate motive of cutting off access to Internet services is to maintain peace and order in society, it is directly in conflict with one of the fundamental rights of freedom of speech and expression allowed by the Constitution of India.

In view of these internet shutdowns, the *United Nations Human Rights Council* stated that, “The shutdown of the internet and telecommunication networks, without justification from the Government, is inconsistent with the fundamental norms of necessity and proportionality”. “The blackout is a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating offence”. They also stated, “We remind the Indian authorities that the restrictions imposed by the Indian Government are intrinsically disproportionate because they preclude considerations of the specific circumstances of each proposed assembly.”<sup>12</sup>

A *Human Rights Council (HRC)* resolution, adopted by consensus in 2016, stated that it “condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law”<sup>13</sup>.

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<sup>11</sup> ANURADHA BHASIN VS UNION OF INDIA ON 10 JANUARY, 2020.

<sup>12</sup>UN rights experts urge India to end communications shutdown in Kashmir, OHCHR, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E> (last visited Apr 30, 2020).

<sup>13</sup> Policy Brief: Internet Shutdowns, INTERNET SOCIETY (2020), <https://www.internetsociety.org/policybriefs/internet-shutdowns> (last visited Apr 30, 2020).

#### **IV. INTERNET SHUTDOWN CASE IN THE STATE OF ASSAM:**

Despite the fact that the Constitution entails immense authority and protects the democracy and its citizens, it seems like the liberation and freedom of the citizens of the country are hanging loosely by a thread. This can be reflected in the Internet shutdowns, which occurred in the State of Assam. The State observed the shutdowns in response to the protests, which took place in the form of a revolt against the *Citizenship Amendment Bill*, which was passed on the 11<sup>th</sup> of December 2019. The legislation provides a roadmap to Indian citizenship for non-Muslim minorities from three surrounding countries (*Afghanistan, Pakistan and Bangladesh*)—not for the nations own Muslim population.<sup>14</sup>

The call to exclude Muslim minority in the nation kick-started many protests in the whole nation. The inhabitants of the State worry that the resources in the country would unlimitedly be exhausted and lead to distortion of their State in its entirety. The residents were enraged and infuriated with the governments call at this deliberate exclusion. In response to this, the government imposed an Internet lockdown from *7:00 P.M. on the 11<sup>th</sup> of December to 7:00 P.M. on the 12th of December.*

#### **V. SUGGESTIONS AND CONCLUSION:**

However, the Internet Shutdown extended way beyond the stipulated period of time. The Shutdowns were highly reprimanded and castigated. The problem with these shutdowns is the lack of transparency in their execution. Moreover, the underlying intent behind them is highly questionable. A lot of speculations lead to the common belief that this was done to tackle the heavy criticism of the government, which was unsurprising. The basic contention here remains that Internet shutdowns do not become second nature to the country. It shouldn't be the immediate or the default way to curb unrest in the country. To being to tackle the violent protests in the country is one thing, but to go curb their inalienable rights is another. There

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<sup>14</sup> Special Correspondent, ANTI-CITIZENSHIP BILL PROTESTS: ARMY DEPLOYED IN ASSAM, TRIPURA; INTERNET SUSPENDED THE HINDU (2019), <https://www.thehindu.com/news/national/other-states/anti-citizenship-bill-protests-army-deployed-in-assam-tripura-internet-suspended/article30277108.ece> (last visited Apr 30, 2020).



should be clarity on obstruction, as well as on the basic priorities and policies. National authorities should ensure that targeted individuals have the ability to raise concerns about detrimental effects on their freedoms, preferences and resources.<sup>15</sup> In addition to the loss in business and the crippling effect on the economy, people lose faith in their government. The credibility of the actions of the regime is eventually at stake. It can almost take an eternity to restore the faith of the people in the authority that governs them. In a democracy where the rights of the citizens are entitled to the utmost importance and integrity, such shutdowns only pose as a threat to the rights.<sup>16</sup>

The social media ban was not only criticized by the people of the nation but in the whole world. It came down as low as calling India, the Internet shutdown capital of the world. Human rights watch in the year 2017 claimed that these shutdowns are invariably violating the International Human rights law.<sup>17</sup> By cutting the access to the internet, the government not only violates the articles of the prevalent country's articles but this shutdown is particularly in violation of the resolution **A/HRC/32/L.20 of 2016**, passed by the United Nation Human Rights Council.<sup>18</sup>

The government should realize the level of responsibility and accountability it has towards the citizens of its country, who are at the receiving end of these atrocities. It harms the resilience of the Internet. Liberty and freedom have always been at the forefront of the logger. Simply stated, the problem before us is what do we need more, autonomy or protection? Whilst the option is apparently daunting, we need to get rid of the platitude of rhetoric and have a concrete answer so that every person has sufficient security and freedom.

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<sup>15</sup> An Overview of Internet Content Blocking: ISOC Internet Society, INTERNET SOCIETY (2019), <https://www.internetsociety.org/resources/doc/2017/internet-content-blocking/> (last visited Apr 30, 2020).

<sup>16</sup> Ibid

<sup>17</sup> India internet shutdowns 'violate human rights', BBC NEWS (2017), <https://www.bbc.com/news/world-asia-india-40298722> (last visited Apr 30, 2020).

<sup>18</sup> Internet Shutdowns cannot be a solution to political challenges in Chad, INTERNET SOCIETY (2018), <https://www.internetsociety.org/blog/2018/04/internet-shutdowns-cannot-solution-political-challenges-chad/> (last visited Apr 30, 2020).

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The balance of power does not swing in any specific direction so that one preference sacrifices the other. It is not our strength to respond if it is better to be liberated than protected or protected rather than liberated. However, it has to be ensured that people enjoy all rights and freedom to the highest degree in a given situation while at the same time maintaining security.

In today's time, we envisage a society where our rights are protected not only in actuality but also on a global platform, which is the Internet; where we share our opinions and are made aware of the gamut of currently occurring's scenarios in the world.

The Internet shutdowns should be temporary and should come with a time limit to them instead of keeping people in the dark.

Range legislations give the government the right to maintain law and order, reasonably and this power should not be subject to whims and fancies of any authority. The citizens desire to reside in a nation where unending and unconstitutional shutdowns don't come naturally to the country and where the true essence of a parliamentary democracy is restored.

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 **CASES**

1. ANURADHA BHASIN VS UNION OF INDIA ON 10 JANUARY, 2020.