

ARE PEOPLE IN J&K CITIZENS OR SUBJECTS?

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Internet is often spoken about as a great equaliser. Its evolution was meant to herald a more equal society. But the ravages wrought by COVID-19 have taught us that the web is also capable of creating new and more insidious barriers to basic goods. Across the world, despite the structural hurdles to access, the Internet has become indispensable to human freedom. School children take their lessons online, businesses cannot work without accessing the web, our courts have moved virtual, and even our leisure is inextricably bound by the system.

What this has also meant is that those without access to the Internet have suffered more than others. The pandemic has shown us a smidgen of just how reprehensible the digital divide is. There was a report, for example, of a student taking her own life, because of a lack of access to online school. Therefore, a staunching of the gateways to the web invariably strikes at the dignity of individuals.

J&K Internet issue | [Panel put off decision over terror attacks in Kashmir Valley, Centre tells Supreme Court](#)

Yet, the government feels no compunction in doing precisely just this in Jammu and Kashmir (J&K). Since August 4 last year, people in the region have not had access to 4G Internet. The authorities see the restriction, which was placed in the lead-up to the dilution of Article 370 of the Constitution, as unassailable. But by all means — even by the Supreme Court's own concession — a complete ban of this kind is disproportionate. It impinges on the liberty of an entire populace. Yet the Court has done little to enforce its writ, to do what the Constitution demands of it: act as an independent check on majoritarian power.

To begin with, this move to restrict 4G Internet in the region was part of an array of measures limiting communications and movement. These moves were made ostensibly out of a concern for national security, with the aim of thwarting terrorism. The blockade though, imposed as it was indiscriminately on the whole region, was challenged in the Supreme Court, in *Anuradha Bhasin v. Union of India* (2020).

The petitioner there made two primary arguments. First, she pointed out that the government had refused to make public its orders blocking the Internet. This, she said, violated a basic tenet of the rule of law: that people have a right to know why their freedoms have been constrained. Second — and more substantively — she argued that empirical evidence demonstrated that there was no link between shutting down the Internet and the state's objective of protecting security. Indeed, available materials pointed the other way: that the Internet was a valuable tool that could be used to counter the spread of incendiary rumours and fake news. Moreover, the government had at its disposal less restrictive options, such as the blacklisting of specific websites and targeted surveillance measures. It is unclear if these alternatives were even considered. Thus, the petitioner claimed that there was no justification for a blanket Internet shutdown that impacted a territory of eight million people, a vast majority of whom had nothing to do with terrorism.

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It took the Supreme Court five months to rule on this petition. All the while, the blockade

continued unabated. And when the decision did come, on January 10, 2020, it did little to mitigate the damage. The Court no doubt held that the ability to access the web had an instrumental bearing on a number of other fundamental rights, including the rights to free speech and freedom of business; and that therefore any limitation placed on the web must be necessary and proportionate to the goal that the State seeks to achieve. This meant that the government now had to produce the orders on the basis of which it was shutting down the Internet. But promising as this might have looked at first blush, the Court did not hold the government accountable. It simply didn't test the blockade on the touchstone of the very constitutional principles that it said were applicable. Instead, it ordered a weekly review by a committee set up under the Temporary Suspension of Telecom Services Rules, 2017.

The aftermath of the judgment brought about [some alleviative measures](#). The prohibitory orders were published, although a perusal of those showed that the reasons remained brief and cryptic (and sometimes contradictory). In time, a few websites, through a process of "whitelisting", were made available for access. But the rest of the Internet was still out of bounds. Eventually, a few months after the verdict, [2G Internet alone was restored](#). But even the onset of the pandemic, which has shown us just how instrumental the Internet is in accessing critical services, didn't lead to a lifting of the ban on 4G.

In response, a second challenge was mounted in the Supreme Court, this time by the Foundation for Media Professionals. This petition pointed out that it had been eight months since the web was restricted in J&K, and now the combination of the pandemic and a lockdown had made Internet deprivation even more unconscionable. Specific evidence was placed before the Court to show how 4G Internet was indispensable for adequate access to education, medicine, and to the courts, and how — without it — the people of J&K were placed at a significant disadvantage compared to the rest of the country.

The Supreme Court gave a ruling on May 11. Once again, it dodged the issue before it. Quite opposed to deciding on the validity of the government's actions and its impact on rights, the Court wound up [creating a new three-member special committee](#) headed by the Union Home Secretary — an exercise wholly outside the legal framework — to take stock of things. The irony here speaks for itself. The executive that was responsible for restricting access to the Internet in the first place was now tasked with reviewing its own actions.

But there's more irony to come. More than two months have passed since the judgment, but, at least ostensibly, no committee has been formed. And 4G Internet remains banned. Early in June, the [petitioner again moved the Court](#), this time seeking to hold the government in contempt. After more than a month, the petition finally came up for hearing. In it, the government claimed that it had, in fact, constituted a committee whose decision, it said, it was ready to deliver in a "sealed envelope" to the Court. But even assuming this exercise has indeed been carried out, it still runs in the teeth of the judgment in *Anuradha Bhasin*, which demands a publication of orders restricting Internet access.

By the time the case comes up for hearing again, the government is expected to file an affidavit explaining itself. But what the Court surely must now see is that the Internet restrictions in J&K are fast approaching their first anniversary. Not only has its intervention thus far been enervated, in that it has failed to answer the constitutional questions at stake, but even the few directions that it has issued have not been complied with. In the process, basic rights have been transformed into government largesse. The question that the Court must now ask itself is, therefore, this: are the people of J&K subjects to be ruled over, or are they citizens who possess rights against the State?

Gautam Bhatia is a Delhi-based lawyer and Suhrith Parthasarathy is an advocate practising at

the Madras High Court

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