

INDELICATE IMBALANCE: THE HINDU EDITORIAL ON SUPREME COURT ABDICATING JUDICIAL RESPONSIBILITY ON KASHMIR

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

The Supreme Court has failed to discharge a judicial duty it was called upon to perform. Its decision to send [the question of restoring 4G connectivity in Jammu and Kashmir](#) for a review to the very authorities who imposed the restriction in the first place is a clear abdication of responsibility. The mandate that the Court enjoys under Article 32 of the Constitution — to enforce fundamental rights — cannot be transferred to the executive. It is quite stark that the three-member Bench has resorted to this measure despite coming to the conclusion that the grievance of the petitioners merits consideration. The judgment is in consonance with a judicial trend that seeks 'balance' between rights and 'national security'. In the J&K context, this approach inevitably results in unquestioning deference to any claim that the executive makes without scrutinising the nature and quality of the claim. The Court has not even pursued the attempt it made in *Anuradha Bhasin*, to lay down a set of rules by which authorities seeking to impose restrictions on fundamental rights must adhere to the doctrine of proportionality. In that case decided in January, the Court refrained from taking any view on the legality of the government's imposition of a blanket communication lockdown in J&K in the wake of the abrogation of the special status enjoyed till then by the erstwhile State. However, it held that repeated resort to Section 144 of the CrPC to impose wide restrictions without territorial or temporal limits was unacceptable. It directed the authorities to review each one of them from time to time. In the present case, it has asked two Secretaries in the Union government and the J&K Chief Secretary to consider the case made out by the petitioners for restoring 4G services.

The Court acknowledges that it might be better and convenient to have better Internet facilities during a global pandemic and a national lockdown. It also notes that the entire Union Territory has been put under curbs that allow only 2G speed. However, it takes into account two claims by the government: one, that there ought to be limits on data speed to prevent terrorists misusing it to disturb peace and tranquillity; and two, that there has been a spike in incidents of terrorism — 108 incidents, in fact, between August 5, 2019 and April 25, 2020 — in the area. The Court also considered recent incidents including the encounter at Handwara. A question that it failed to ask was how these incidents could be linked to Internet speed when all of them took place while severe restrictions were in place. Without a judicial standard to scrutinise claims made in the name of national security, is it right to use them to dislodge fundamental rights? Further, the institutional discrimination against J&K that this approach causes is not taken into account at all. The delicate balancing the Court attempts is, in fact, no balance at all.

You have reached your limit for free articles this month.

Already have an account ? [Sign in](#)

Start your 14 days trial now sign up. [Sign Up](#)

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading as many articles as you wish without any limitations.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

*Our Digital Subscription plans do not currently include the e-paper ,crossword, iPhone, iPad mobile applications and print. Our plans enhance your reading experience.

Dear reader,

We have been trying to keep you up-to-date with news that matters to our lives and livelihoods, during these difficult times. To enable wide dissemination of news that is in public interest, we have increased the number of articles that can be read free, and extended free trial periods. However, we have a request for those who can afford to subscribe: please do. As we fight disinformation and misinformation, and keep pace with the happenings, we need to commit greater resources to news gathering operations. We promise to deliver quality journalism that stays away from vested interest and political propaganda.

Please enter a valid email address.

From the abrogation of the special status of Jammu and Kashmir, to the landmark Ayodhya verdict, 2019 proved to be an eventful year.

Subscribe to The Hindu now and get unlimited access.

Already have an account? [Sign In](#)

Sign up for a 30-day free trial. [Sign Up](#)

To continue enjoying The Hindu, You can turn off your ad blocker or [Subscribe to The Hindu](#).

[Sign up for a 30 day free trial.](#)

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com