

# SC judgement on restrictions in Kashmir

February 5, 2020

**Source:** *The Hindu*

**Manifest pedagogy:** Right to internet access and the associated issues are an important aspect of Article 19 in the evolutionary understanding of freedom as a right. The recent curbs on the right to free speech because of the unrest in the country over Article 370 and CAA have opened up many constitutional issues of which the Right to Internet is important for Mains.

**In news:** Supreme Court(SC) recently directed J&K administration to restore internet services in hospitals and educational institutions.

**Placing it in syllabus:** Fundamental rights and Article 370

## **Dimensions:**

- SC judgement on the issue
- Procedure followed by the government to suspend Internet services
- Positives
- Shortcomings

## **Content:**

### **SC judgement on the issue:**

- The SC recently directed the J&K administration to **review and place in the public domain all restrictions imposed** following the abrogation of Article 370 in August, 2019.
- It stated that **five-month-long Internet shutdown** in Kashmir was in **violation of Telecom Rules.**

- Hence it directed the J&K administration to restore services in hospitals and educational institutions.
- SC **declared that the fundamental** right to freedom of speech and expression and the **right to carry on trade or business using the Internet are constitutionally protected.**
- The court essentially laid out guidelines that **Internet shutdowns cannot be arbitrary** and can be challenged in the courts.



- The power under **Section 144 cannot be used to suppress legitimate expression of opinion** or grievance or exercise of any democratic rights.
- The SC bench said that the orders suspending the internet would have to necessarily state how the action was justified and proportionate to the imminent threat to law and order.

### **Procedure followed by the government to suspend Internet services:**

The **three laws** that deal with suspension of Internet services are:

- *Information Technology Act, 2000*
- Criminal Procedure Code (CrPC), 1973
- Telegraph Act, 1885

Before 2017, internet suspension orders were issued under **Section 144 of the CrPC**. It empowers a **district magistrate/ sub-divisional magistrate/ any other executive magistrate** specially empowered by the state government to issue orders to prevent and address urgent cases of apprehended danger or

nuisance.

The use of Section 144 to suspend mobile internet was challenged before the Gujarat High Court in 2015 but the court upheld the power of the magistrate to issue such orders.

In 2017, the central government notified the **Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules** under the Section 5(2) of the Telegraph Act to govern suspension of Internet in the occurrence of a “**public emergency**” or for it to be “**in the interest of public safety**”.

SC in its recent verdict reiterated that the **competent authority to issue an order** under the Suspension Rules, in ordinary circumstances, would be the **Secretary to the Ministry of Home Affairs**. In case the confirmation does not come from a competent authority, the orders shall cease to exist within a period of 24 hours.

### **Positives:**

- SC declared that the **fundamental right to carry on trade or business using the Internet is constitutionally protected under Article 19(1)(a) and Article 19(1)(g)** of the Constitution.
- Lack of availability of suspension orders in the public domain prevented challenges before courts. Now the court has ruled that the **government cannot refuse to publish such orders citing logistical inconvenience**.
- For the sake of a few militants it is **not right to hold an entire society hostage**. On the contrary, modern communication technology will help to nab them.
- Helps in **promoting local business** which was hampered since the internet breakdown. Around 4,196 hours of internet blackouts in India cost the economy close to \$1.3 billion in 2019.
- The court's recognition of the **importance of the internet as a tool for trade and commerce** will play an

important role in future litigations around internet shutdowns.

### **Shortcomings:**

- The court did not go as far as to recognise that the right to access the internet is a fundamental right (( Kerala High Court in Faheema Shirin (2019) which gave judicial recognition to the right to internet access as a fundamental right)).
- There would be uncertainty over the interpretation of these orders and their application to the facts on the ground.