

NOTES ON FOUNDATION OF MEDIA PROFESSIONALS *VS.* UT OF J&K:

1. Again, this Court is called upon to address a very important but a sensitive issue on national security and human rights, wherein we have to ensure that national security and human rights can be reasonably and defensibly balanced, a responsibility, that this Court takes with utmost seriousness.
  
4. Broadly, the argument of the Petitioners is premised on the ground that in the existing COVID-19 situation, when there is a national lockdown, the restrictions imposed on the residents of the entire Union Territory of Jammu and Kashmir impacts their right to health, right to education, right to business and right to freedom of speech and expression.
  
5. They submit that access to internet acquires even more importance under the prevailing circumstances in the country, relating to the pandemic. The Petitioners contended that the fulfillment of the right to health is dependent on the availability of effective and speedy internet in order to access medical services and information on containment strategies. The denial of such critical information not only violates the peoples' right to receive information, but is also a denial of their right to health.

Furthermore, the Petitioners contend that restrictions on internet speed directly impacts the students of Jammu and Kashmir to exercise their right to education as they are unable to access to e-learning services such as online video classes, and other online educational content. This not only impacts their continuing education, but also disadvantages the students of Jammu and Kashmir who are preparing for national/competitive exams. Petitioner in W.P. (C) D. No. 10817 of 2020, has appended the affidavits of a journalist who collected testimonies of doctors, teachers, students, journalists, lawyers and business persons from the Union Territory, and of a technical expert narrating importance of 4G internet, to support the above submissions.

6. Moreover, the Petitioners have argued that the actions of Respondent No. 1 are violative of the directions laid down by this Court in **Anuradha Bhasin** (supra) as well as the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 [**“Telecom Suspension Rules”**] as no Review Committee has been constituted by the Respondent No. 1. Further, the blanket orders passed by Respondent No. 1, indicates non-application of mind. Lastly, Respondent No. 1 has failed to provide any rational nexus between the restriction of the

internet speed and national security. The Petitioners submitted that since the introduction of internet in the Union Territory of Jammu and Kashmir, the number of incidents relating to terrorism in the region have actually reduced. Lastly, the Petitioners pleaded in the alternative that if the Respondents apprehend the misuse of data services, then they could consider restricting the internet only in certain problematic areas or providing 3G/4G internet to certain regions on a trial basis.

- 7.** The learned Attorney General preliminarily contended that Courts should not step into issues of national security which are best left to those in charge of policy making [*refer to Zamora, (1916) 2 AC 77 (PC)*]. Further, the learned Attorney General relying on some judicial pronouncements submitted that the claims of fundamental rights have to be examined against the larger public interest of protecting the security of the State, wherein, while balancing the aforesaid conflicting rights, the security of the nation should triumph against the fundamental rights of the citizens. Moreover, in the prevailing circumstances wherein there is continuing insurgency in the region, the spreading of fake news to incite violence, *etc.*, it would not be possible to provide full internet services to the region.

**8.** Learned Solicitor General vehemently opposed the petitions and argued that the authorities have strictly complied with the directions passed by this Court on the previous occasion, and that the relevant authorities are cognizant of not only the changing circumstances but also the ground realities. The information regarding COVID-19 available on various social media platforms, government websites, applications developed by Respondent No. 2 for disseminating information can be easily downloaded over the 2G internet. Moreover, no restrictions exist over fixed line internet. Advisories and documents relating to COVID-19 have already been accessed by over 1 lakh health professionals in the Union Territory of Jammu and Kashmir through fixed line internet. Further, to ensure effective access to right to health, the Respondent No. 2 is broadcasting information through various radio channels and through satellite TV and local cable networks. 1.6 lakh pamphlets and 90,000 posters in English, Urdu and Hindi are being disseminated to the public. Wide publicity is also being given to various helpline numbers which have been established for COVID-19 related queries through print and electronic media. With respect to the right to education of the students of Jammu and Kashmir, lessons are being delivered on 16 DD channels at a national level, and through the radio. The

department has also undertaken the distribution and delivery of textbooks, upto elementary level, to the eligible students at their homes.

**9.** The learned Solicitor General also highlighted the fact that over 108 terrorist incidents have taken place in the recent past, between August 05, 2019 to April 25, 2020 in the Union Territory of Jammu and Kashmir. In view of the aforesaid fact, the learned Solicitor General submitted that the current situation in the Union Territory of Jammu and Kashmir is very grave and volatile, even referring to the recent terrorist activity in Kupwara District. The learned Solicitor General therefore submitted that the authorities have calibrated the restrictions based on the requirement so as to reduce the misuse of internet and that the measures adopted by the authorities are reasonable. He therefore prayed that the present petitions ought to be dismissed.

**16.** In any case, we may note that the common thread in the impugned orders is that they have been passed for the entire Union Territory of Jammu and Kashmir. In this regard, our

observations in the **Anuradha Bhasin** (supra) may be of some relevance:

“The degree of restriction and the scope of the same, both territorially and temporally, must stand in relation to what is actually necessary to combat an emergent situation.”

Although the present orders indicate that they have been passed for a limited period of time, the order does not provide any reasons to reflect that all the districts of the Union Territory of Jammu and Kashmir require the imposition of such restrictions. At the same time, we do recognize that the Union Territory of Jammu and Kashmir has been plagued with militancy, which is required to be taken into consideration. These competing considerations needs to calibrated in terms of our judgment in **Anuradha Bhasin** (supra).

**21.** During the course of the arguments, the Respondent No. 2- Union of India has submitted that continuous infiltration, foreign influence, violent extremism and issues of national integrity are prevalent in the Union Territory of Jammu and Kashmir, which are serious issues.

**23.** At the same time, the Court is also cognizant of the concerns relating to the ongoing pandemic and the hardships that may be

faced by the citizens. It may be noted that in the earlier judgment of **Anuradha Bhasin** (supra) this Court had directed that, under the usual course, every order passed under Rule 2(2) of the Telecom Suspension Rules restricting the internet is to be placed before a Review Committee which provides for adequate procedural and substantive safeguards to ensure that the imposed restrictions are narrowly tailored. However, we are of the view that since the issues involved affect the State, and the nation, the Review Committee which consists of only State level officers, may not be in a position to satisfactorily address all the issues raised. We, therefore, find it appropriate to constitute a Special Committee comprising of the following Secretaries at national, as well as State, level to look into the prevailing circumstances and immediately determine the necessity of the continuation of the restrictions in the Union Territory of Jammu and Kashmir:

- a. The Secretary, Ministry of Home Affairs (Home Secretary), Government of India.
- b. The Secretary, Department of Communications, Ministry of Communications, Government of India.
- c. The Chief Secretary, Union Territory of Jammu and Kashmir

The aforesaid Special Committee shall be headed by the Secretary, Ministry of Home Affairs (Home Secretary), Government of India.

- 24.** The Special Committee is directed to examine the contentions of, and the material placed herein by, the Petitioners as well as the Respondents. The aforesaid Committee must also examine the appropriateness of the alternatives suggested by the Petitioners, regarding limiting the restrictions to those areas where it is necessary and the allowing of faster internet (3G or 4G) on a trial basis over certain geographical areas and advise the Respondent No. 1 regarding the same, in terms of our earlier directions.
- 25.** The writ petitions are disposed of in the afore-stated terms.