

# The Impact of Internet Shutdowns on Human Rights Defenders in India

JULY 2022



# ■ ABOUT

## **American Bar Association Center for Human Rights**

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# ■ ACKNOWLEDGEMENTS

The Center would like to acknowledge all of the interview respondents that shared their experience with the Center's report-writers.

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# ■ EXECUTIVE SUMMARY

Internet shutdowns are state-enforced disruptions of internet access aimed at controlling the flow of information. These disruptions include a complete blockage, a reduction in speed, or content blockage, and can be enforced over a couple of hours or over many months and may take place in a particular locality or throughout an entire state. They may also be a part of a more structural and complete communication blockage. It is not uncommon for governments to misuse internet shutdowns under the guise of protecting public order and national security in order to silence critical voices. The use of internet shutdowns has proliferated over the entire globe, but nowhere has the internet been shut down more often than in India.

This report examines the relationship between internet shutdowns and challenges to the work of human rights defenders in India. The first case study looks to the 213-day shutdown in Jammu and Kashmir in 2019, then goes on to examine other shutdowns in India (particularly those put in place in response to public protests or unrest). The analysis for this report is based on desk research and on 25 interviews conducted with human rights defenders from across 11 states in India.

The findings of the report are stark: internet shutdowns have turned into an often-used tool that the government relies upon in order to silence dissent and limit the rights to freedom of press and expression under the guise of “maintaining law and order.” Lawyers, journalists, activists, and civil society actors have been immensely impacted by the consequential loss of the means and resources to carry out their professional activities during shutdowns.

Without the internet, lawyers were unable to access legal research to defend their clients and judges were left without access to court data systems. Without the internet, journalists and civil society actors were unable to report on any human rights abuses that took place during protests and on the physical lockdown of Kashmir by both state and nonstate actors. Further, this report finds that the government has used vaguely worded regulations to proliferate their use of internet shutdowns, despite the fact that the Indian courts have on several occasions called on the government to limit its use of shutdowns and demanded that they only be put in place following a legally sound procedure that respects the rights of citizens to privacy, speech, and expression.

The report concludes with a set of recommendations for the government of India, the international community, and civil society actors. Particularly, for the government of India, reviewing the rules surrounding internet shutdowns and permitting greater judicial oversight of that process is an important first step to rolling back the increasing tide of internet shutdowns in the country. Unless some of the recommendations from the report are adopted, not only will the internet not be free in India, but any ruling administration in the future will be able to use shutdowns as a means to silence dissent, challenge the rule of law, and violate the individual rights of citizens.

# I. INTRODUCTION

Experts define an internet shutdown as “an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.”<sup>1</sup> Put it more simply, an internet shutdown, which is typically ordered by the government, can be likened to an “internet kill switch,”<sup>2</sup> a “network disruption,” a “blackout,”<sup>3</sup> or the imposition of a “virtual curfew, often to control the flow of information.”<sup>4</sup>

Internet shutdowns take place at the national, state, and local levels in India as

a tool to silence critics and impede the right to access information. There can be blanket shutdowns, cutting off access entirely to the mobile internet or to the entire internet (both mobile internet and broadband/WiFi).<sup>5</sup> Internet shutdowns can also include the “blacklisting” of websites prohibiting access to them, the intentional throttling of internet speeds (such as reduction of speeds from 4G to 2G), and content blocking (including the temporary blocking of specific apps/websites).<sup>6</sup> As happened in Jammu and Kashmir in August 2019, internet shutdowns can take the form of a complete telecommunications blockade, in which landlines, mobile phones, SMS services, and

- 1 Deji Olukotun & Peter Micek, *No y.com/more internet shutdowns! Let's #KeepItOn*, ACCESS NOW (Mar. 30, 2016, 12:50 PM), <https://www.accessnow.org/no-internet-shutdowns-lets-keepiton/>; #KeepItOn: *Frequently Asked Questions*, ACCESS NOW, <https://www.accessnow.org/keepiton-faq/>. This definition has also been followed by other organizations, such as the Internet Society, *Policy Brief: Internet Shutdowns*, INTERNET SOCIETY (Dec. 18, 2019), [https://www.internetsociety.org/policybriefs/internet-shutdowns/#\\_edn3](https://www.internetsociety.org/policybriefs/internet-shutdowns/#_edn3)
- 2 Nakul Nayak, *The Anatomy of Internet Shutdowns – I (Of Kill Switches and Legal Vacuums)*, CENTRE FOR COMMUNICATION GOVERNANCE (Aug. 29, 2015), <https://ccgnludelhi.wordpress.com/2015/08/29/the-anatomy-of-internet-shutdowns-i-of-kill-switches-and-legal-vacuums/>.
- 3 Olukotun & Micek, *supra* note 1.
- 4 Ritu Srivastava, *Anatomy of Virtual Curfews: Human Rights vs. National Security*, <https://www.defindia.org/wp-content/uploads/2017/07/Human-Rights-vs-National-Security.pdf> (last accessed July 29, 2021). These disruptions may be due to emergencies or on grounds of national security.
- 5 Darrell M. West, *Internet shutdowns cost countries \$2.4 billion last year*, CENTER FOR TECHNOLOGY INNOVATION AT BROOKINGS (Oct. 2016), <https://www.brookings.edu/wp-content/uploads/2016/10/intenet-shutdowns-v-3.pdf>; Japreet Grewal, *Internet Shutdowns in 2016*, THE CENTRE FOR INTERNET & SOCIETY, INDIA, <https://cis-india.org/internet-governance/files/internet-shutdowns> (last visited July 19, 2021).
- 6 Darrell M. West, *Internet shutdowns cost countries \$2.4 billion last year*, CENTER FOR TECHNOLOGY INNOVATION AT BROOKINGS (Oct. 2016), <https://www.brookings.edu/wp-content/uploads/2016/10/intenet-shutdowns-v-3.pdf>; Jammu Kashmir Coalition of Civil Society, *Kashmir's Internet Siege*, <https://jkccs.net/report-kashmirs-internet-siege/assets/Kashmirs-Internet-Siege-18MB.pdf>. “Whitelisting” of websites takes place when the Government permits access only to certain websites and internet applications, while continuing to “blacklist” all other sites, as happened in Jammu & Kashmir in January 2021. See, *J&K adds 1,000 more websites to internet whitelist: Here are all 1,485 URLs*, THE INDIAN EXPRESS (Feb. 16, 2020), <https://indianexpress.com/article/india/jk-internet-websites-whitelist-urls-6270463/>. Whitelisting can also involve providing access to the internet only to some institutions, officials, individuals, or companies, thereby blacklisting everyone else, as in Myanmar in 2019-20. See, Rory Wallace, *Myanmar junta builds 'walled garden' of internet services*, NIKKEI ASIA (Apr. 28, 2021), <https://asia.nikkei.com/Spotlight/Myanmar-Coup/Myanmar-junta-builds-walled-garden-of-internet-services>.



In 2016, the United Nations Human Rights Council passed a resolution unequivocally condemning internet shutdowns as a violation of international human rights law, calling upon all states to “refrain from and cease” such measures.<sup>15</sup> The resolution affirmed that the same rights that people have offline must also be protected online, in accordance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR) pertaining to the right to freedom of expression.<sup>16</sup>

Despite the United Nations (UN) resolution and various treaty obligations, internet shutdowns are on the rise in India, signaling a rise in digital censorship in the world’s biggest democracy.<sup>17</sup> Existing research on internet shutdowns in India has focused on their broad economic cost<sup>18</sup> and their humanitarian, social, and psychological<sup>19</sup> impacts, as well as their specific impact on communities living in conflict regions.<sup>20</sup> This report expands the canvass by examining the impact of internet shutdowns on human rights defenders (HRDs) and on their work across India.<sup>21</sup> The report contextualizes their experiences within the existing legal and political environment in order to understand whether shutdowns are being legitimately enacted to address “public emergency or public safety”<sup>22</sup> or are being overused to silence dissent, challenge

the work of human rights defenders, and limit the capability of institutions to deliver justice.

The findings of the report show the negative repercussions of internet shutdowns on respect for the rule of law and on the ability of civil society and HRDs to fulfill their missions of protecting and promoting human rights. In severe cases like the Kashmir shutdown, which lasted over a year, the entire human rights community was left without means to communicate with each other or the outside world. Because of the internet shutdown, the ability to collect and share evidence of human rights abuses was all but eliminated, leaving many victims without access to justice. Also, in Kashmir, once the internet shutdown was enforced, journalists were left without the ability to fact-check governmental statements, which meant that the state was effectively the only source of information.

In more practical terms, the day-to-day operation of the judiciary was also impacted by the shutdowns. In some instances, online court dockets were no longer operational, presenting challenges to the functioning of the entire court system. In other instances, lawyers were unable to prepare for their cases due to lack of electricity: many electricity providers require

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15 Clause 10 of the Resolution states, “[c]ondemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures.” G. A. Res. A/HRC/32/L.20 (June 27, 2016).

16 G. A. Res. A/HRC/32/L.20, *supra* note 15 clause 1.”

17 Steven Feldstein, *Can Democracy Survive the “Splinternet”?*, AMERICAN PURPOSE (Sept. 01, 2021), <https://www.americanpurpose.com/articles/can-democracy-survive-the-splinternet/>.

18 Rajat Kathuria *et al.*, *The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India*, INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS (Apr. 2018), [http://icrier.org/pdf/Anatomy\\_of\\_an\\_Internet\\_Blackout.pdf](http://icrier.org/pdf/Anatomy_of_an_Internet_Blackout.pdf).

19 Ambika Tandon, *Internet Shutdown Stories*, THE CENTRE FOR INTERNET & SOCIETY (2018), <https://cis-india.org/internet-governance/blog/internet-shutdown-stories>; Zothan Mawii *et al.*, *Kept in the Dark: Social and Psychological Impact of Network Shutdowns in India*, <http://defindia.org/wp-content/uploads/2018/04/Kept-in-the-Dark.pdf>.

20 See generally, Jammu Kashmir Coalition of Civil Society, *Kashmir’s Internet Siege* (Aug. 2020), <https://jkccs.net/report-kashmirs-internet-siege/assets/Kashmirs-Internet-Siege-18MB.pdf>. See also, Chinmayi S K, *Those Unspoken Thoughts: A Study of Censorship and Media Freedom in Manipur, India*, OONI, <https://ooni.org/post/2020-those-unspoken-thoughts-otf-fellow-report/>; Chinmayi S K & Rohini Lakshane, *Of Sieges and Shutdowns: How unreliable mobile networks and intentional Internet shutdowns affect the lives of women in Manipur*, BACHCHAO PROJECT (May 2018), [http://thebachchaoproject.org/wp-content/uploads/Of\\_Sieges\\_and\\_Shutdowns\\_The\\_Bachchao\\_Project\\_2018\\_12\\_22.pdf](http://thebachchaoproject.org/wp-content/uploads/Of_Sieges_and_Shutdowns_The_Bachchao_Project_2018_12_22.pdf).

21 For this report, HRDs are defined as those “*who, individually or with others, act to promote or protect human rights in a peaceful manner*”, and would include lawyers, journalists, human rights activists, student activists, and civil society actors at large. See <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> (last visited July 28, 2021).

22 Internet shutdowns are authorized under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules (2017) (hereinafter, “TSP Rules”). Department of Telecommunications, Notification New Delhi, the 7<sup>th</sup> August, 2017, <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf>. These Rules permit the temporary suspension of telecom services only in case of public emergency or public safety.

online payments which could not be made during shutdowns. In addition, lawyers whose power had been cut were unable to prepare for their cases.

However, the report finds that serious issues exist even when an internet shutdown is lifted, even after a short period of time. Though Kashmir suffered the longest internet shutdown, shutdowns have been used for shorter periods in other parts of the country. Extended shutdowns pose extreme challenges to the human rights community, as will be discussed below, but short shutdown orders create a false sense of normalcy once the internet is restored while the underlying legal structure remains.

The methodology used for this report included performing desk research, reviewing news reports and court orders, and conducting interviews with HRDs across India. Over 25 interviews were conducted with HRDs from 11 states; namely, Assam, Bihar, Delhi, Jammu and Kashmir, Karnataka, Meghalaya, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal, all of which had been directly impacted by an internet shutdown between January and March 2020.

The interviews aimed to understand how the internet shutdown impacted the work of HRDs by asking them a number of questions, including whether they believed shutdowns were legally authorized and whether they considered challenging them in court. Further, the respondents were asked about whether they believed there were any legal standards that govern a shutdown and whether those standards actually make a difference. Finally, the respondents were asked about potential alternatives that have been used or could be used to mobilize civil society and whether they had any suggestions about how to frame a more reasonable internet shutdown policy in India.

Safeguards to ensure the protection of at-risk persons were applied during the research, including anonymizing interview sources in the report. Multiple respondents preferred to

remain anonymous for fear of reprisals. Where needed, an alias (*indicated with an asterisk*) has been used to protect respondents' identities. Some declined to speak to the researchers even off the record, demonstrating how contentious the issue of internet shutdown is in India and its chilling effect on the realization of the right to the freedom of expression. Further, the COVID-19 pandemic made in-person interviews impossible, requiring them to be conducted over the phone or via email.

The interviews were supplemented by secondary research, including a review of the relevant literature and news reports concerning the notification and extension of shutdown orders. Researchers relied on newspaper reporting of the shutdown orders and their extensions in instances where these were not made public or recorded by the central government.<sup>23</sup>

The report contains eight sections. Sections II and III detail the political and legal context for internet shutdowns, describing the regulatory framework used by state actors to clamp down on dissidents. In section IV, the report focuses on the impact of shutdowns on HRDs in Kashmir, and in section V the report examines the shutdowns put in place in response to protest movements outside of Kashmir. Section VI goes on to critically analyze the specific impacts and challenges posed to human rights defenders in the aftermath of a shutdown: for example, in almost every case of a shutdown, journalists were unable to report stories, news outlets were forced to shut down, and lawyers were unable to speak with their imprisoned clients. The government often filled the information gaps with its own information, which could not be verified due to the internet shutdown. Sections VII and VIII examine these conditions and ask the question of whether a "reasonable" internet shutdown policy is possible. The report concludes with a proposed set of recommendations tailored to various stakeholders.

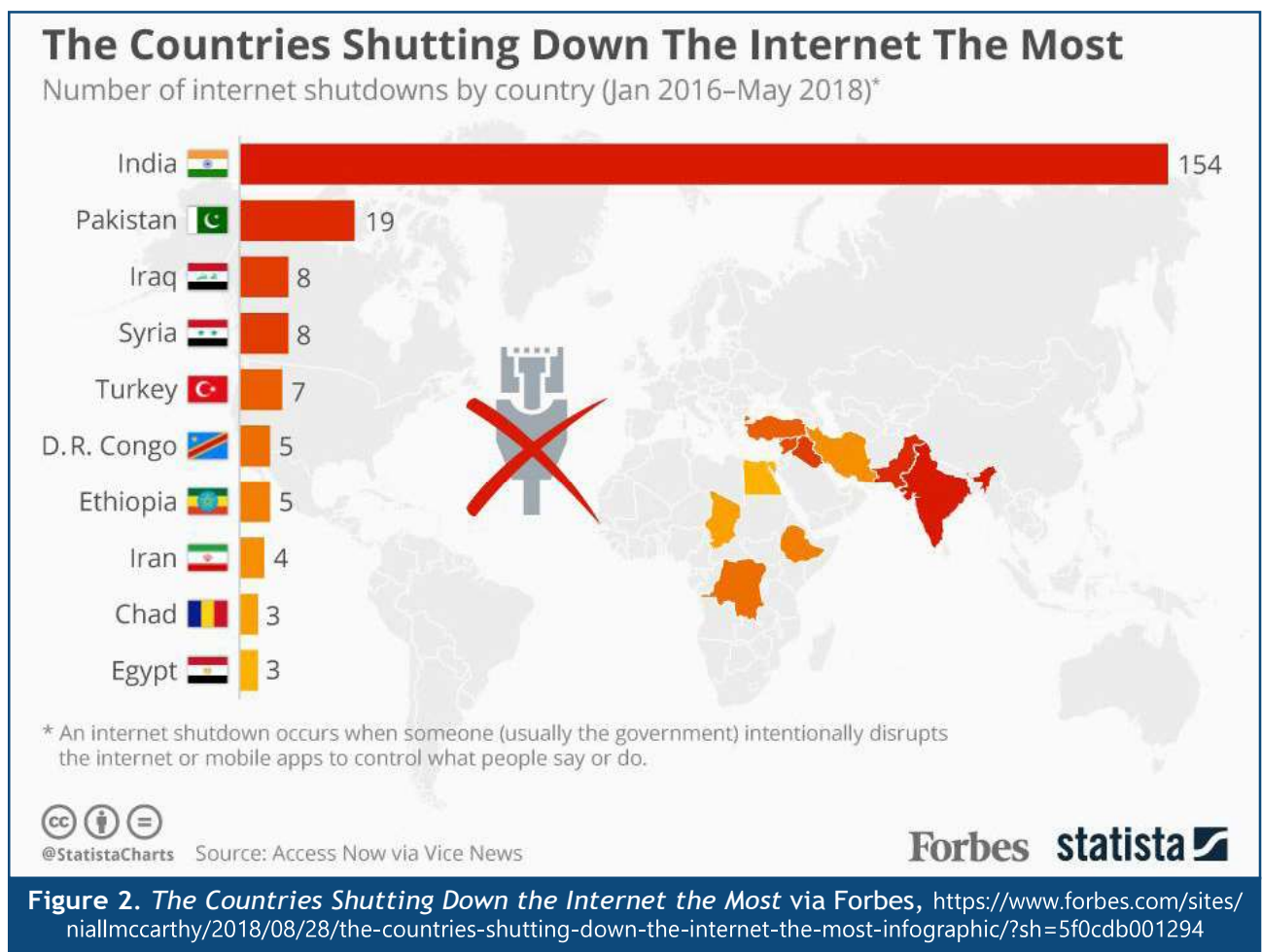
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23 See, Sobhana K. Nair, A No verifiable records of Internet shutdowns available: parliamentary panel, THE HINDU (Nov. 16, 2021) <https://www.thehindu.com/news/national/no-verifiable-records-of-internet-shutdowns-available-parliamentary-panel/article37525050.ece>.



## II. BACKGROUND AND CONTEXT

Access Now has reported that India has carried out more internet shutdowns than any other country in the world. The number and duration of these shutdowns have increased and they are now spreading geographically across the country. There were 528 of these shutdowns between 2012 and June 2021.<sup>24</sup>



<sup>24</sup> *India's Shutdown Numbers*, supra note 14.



Figure 3. The number of shutdowns per year between 2012 and 2021, totaling to 528 shutdowns. via Access Now, See Footnote 24.

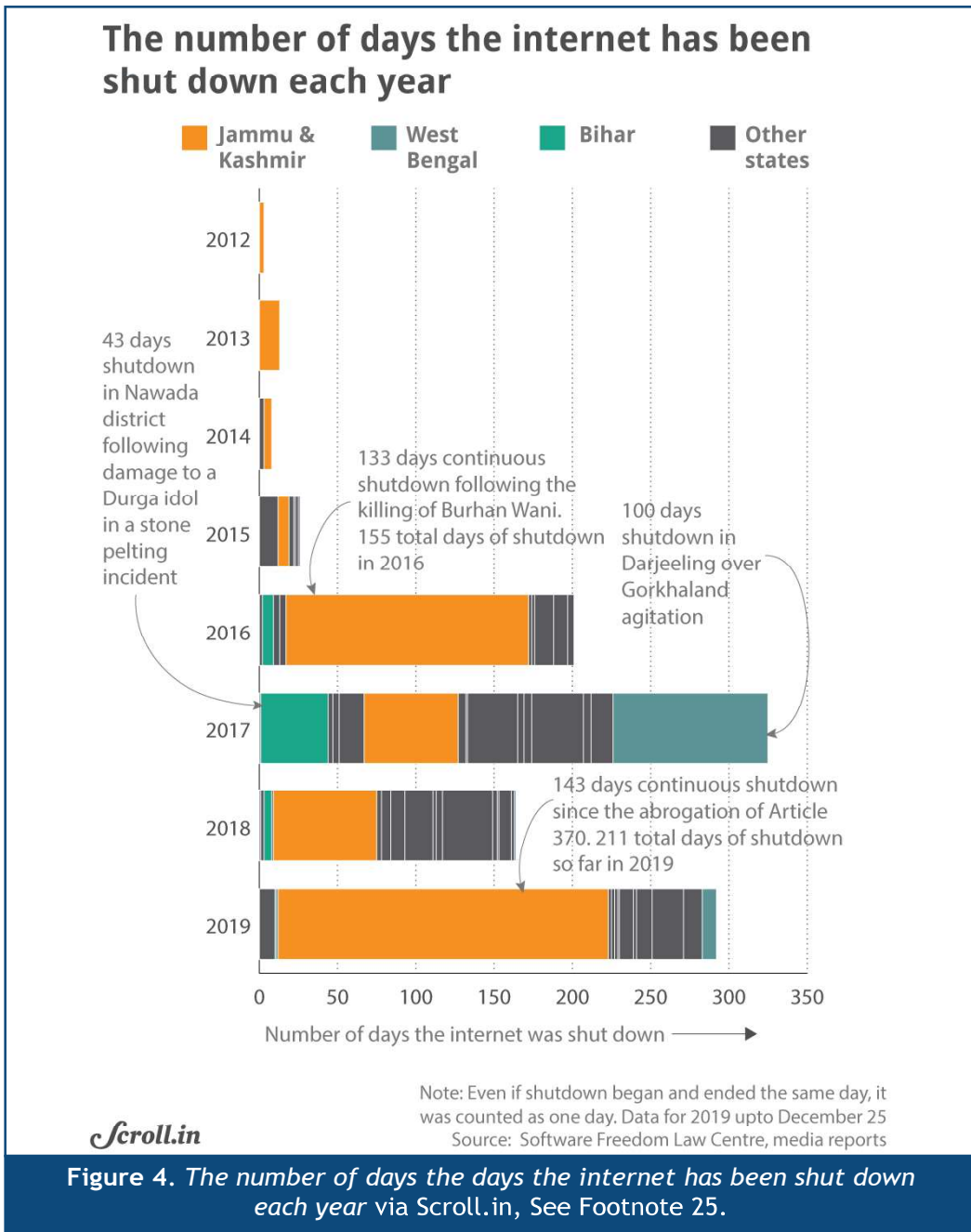


Figure 4. The number of days the days the internet has been shut down each year via Scroll.in, See Footnote 25.

As demonstrated above,<sup>25</sup> the pattern of internet shutdowns has changed over the years. Internet shutdowns, which were initially limited to Jammu and Kashmir, have increasingly been used as a tool by state governments to deal with communal tension,<sup>26</sup> protests,<sup>27</sup> and law and order issues.<sup>28</sup> As per the SFLC internet shutdown tracker, internet shutdowns have, up to the date of this report, been ordered in 75 percent of all Indian states;<sup>29</sup> the internet was even restricted in the capital city of Delhi.<sup>30</sup> There has been an increase in shutdowns since the implementation of the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules in 2017.

The rise in internet shutdowns comes amidst rising concerns of digital authoritarianism and deterioration of press freedoms in India.<sup>31</sup> These realities stand in deep contrast with the government's "Digital India" initiative, which places technology and the internet at the heart of governance and a "digitally empowered society," following the vision of increased digital accessibility.<sup>32</sup> The internet, as acknowledged in the Digital India initiative, is essential for communication and for the health, education, legal, and banking sectors. During the COVID-19 pandemic, the importance of digital accessibility was further recognized.<sup>33</sup> Without the internet, freedom of expression, the ability to communicate, and access to crucial public health information are all directly impacted.<sup>34</sup>

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- 25 Nithya Subramanian, *In charts: India shut down the internet more than 100 times in 2019*, SCROLL.IN (Dec. 27, 2019 6:30 AM), <https://scroll.in/article/947880/in-charts-india-shut-down-the-internet-than-100-times-in-2019>; see also *supra* text accompanying note 14.
- 26 For instance, the internet was suspended in parts of Rajasthan's Baran district on April 11, 2021, as a result of communal clashes that broke out. See, *Communal Violence in Baran in Rajasthan; curfew clamped; internet suspended*, THE TIMES OF INDIA (Apr. 11, 2021 10:26 PM), <https://timesofindia.indiatimes.com/city/jaipur/communal-violence-in-baran-in-rajasthan-curfew-clamped-internet-suspended/articleshow/82019450.cms>; Sonia Faleiro, *How India became the world's leader in internet shutdowns*, MIT TECHNOLOGY REVIEW (Aug. 19, 2020), <https://www.technologyreview.com/2020/08/19/1006359/india-internet-shutdowns-blackouts-pandemic-kashmir/>.
- 27 The internet was also suspended in many districts across the country during the anti-CAA protests in 2019 and the farmers protests in 2021. See, *India protests: Internet cuts to hunger-striking farmers in Delhi*, BBC (Jan. 30, 2021), <https://www.bbc.co.uk/news/world-asia-india-55872480>; Jeffrey Gettleman et al., *India Adopts the Tactic of Authoritarians: Shutting Down the Internet*, THE NEW YORK TIMES (Dec. 20, 2019), <https://www.nytimes.com/2019/12/17/world/asia/india-internet-modi-protests.html>.
- 28 See Nehal Johri, *India's internet shutdowns function like 'invisibility cloaks'*, DW (Nov. 13, 2020), <https://www.dw.com/en/indias-internet-shutdowns-function-like-invisibility-cloaks/a-55572554> (for an analysis of some of the underlying internet shutdown orders). The analysis "showed that almost every second shutdown occurred against a backdrop of state violence."
- 29 India has 28 states and 8 union territories. See, *States and Union Territories*, KNOW INDIA, <https://knowindia.gov.in/states-uts/> (last visited July 28, 2021); see also *supra* text accompanying note 14.
- 30 *Amid Nationwide Anti-CAA Stir, Internet Suspended for 45 Hrs in Major Cities of UP; Services Hit in Bengal*, NEWS 18 (Dec. 20, 2019, 5:29 PM), <https://www.news18.com/news/india/amid-nationwide-anti-cao-stir-internet-suspended-for-45-hrs-in-major-cities-of-up-services-hit-in-bengal-2431175.html>.
- 31 Vindu Goel, *India Proposes Chinese-Style Internet Censorship*, THE NEW YORK TIMES, (Feb. 14, 2019), <https://www.nytimes.com/2019/02/14/technology/india-internet-censorship.html>; Niha Masih, *India is the next big frontier for Netflix and Amazon. Now, the government is tightening rules on content.*, THE WASHINGTON POST (Mar. 14, 2021, 5:47 AM), <https://www.washingtonpost.com/world/2021/03/14/india-netflix-amazon-censorship/>.
- 32 Digital India, *Introduction*, <https://www.digitalindia.gov.in/content/introduction> (last visited July 19, 2021).
- 33 Romita Saluja, *Internet Shutdowns Leave Indians Struggling with Everyday Life*, FOREIGNPOLICY.COM (Feb. 19, 2021 2:15 PM), <https://foreignpolicy.com/2021/02/19/internet-shutdowns-india-farmers-protests-mental-health/>; Douglas Broom, *Coronavirus has exposed the digital divide like never before*, WORLD ECONOMIC FORUM (Apr. 22, 2020), <https://www.weforum.org/agenda/2020/04/coronavirus-covid-19-pandemic-digital-divide-internet-data-broadband-mobility/>. See also, Vrinda Bhandari, *Improving internet connectivity during Covid-19*, DIGITAL PATHWAYS PAPER SERIES (Aug. 2020), [https://pathwayscommission.bsg.ox.ac.uk/sites/default/files/2020-09/improving\\_internet\\_connectivity\\_during\\_covid-19\\_0.pdf](https://pathwayscommission.bsg.ox.ac.uk/sites/default/files/2020-09/improving_internet_connectivity_during_covid-19_0.pdf).
- 34 Yaman Akdeniz, *Freedom of Expression on the Internet*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, (Dec. 15, 2011) <https://www.osce.org/files/f/documents/e/f/80723.pdf>. For an account of how protesting farmers around the Delhi borders were affected by the internet shutdown in January 2021, see Sushovan Sircar, *Internet Shutdowns Amplifying Fake News, Rumours: Farmers & Experts*, THE QUINT (Feb. 5, 2021, 9:27 PM), <https://www.thequint.com/cyber/internet-shutdown-at-farmer-protest-sites-amplifying-misinformation-rumours#read-more>.

Documenting government actions and the ability to access or verify news also becomes difficult.<sup>35</sup> Access to health services has also been severely impeded,<sup>36</sup> while simultaneously imposing a psychological cost on people.<sup>37</sup> Students struggle to pay fees, apply for visas, and write exams without access to the internet.<sup>38</sup>

In fact, internet shutdowns impose significant costs on India's economy. Studies have estimated the cost of such shutdowns to be over US \$3 billion between 2012-2017,<sup>39</sup> and over US \$2.7 billion in 2020 alone.<sup>40</sup> These costs primarily impact telecommunication companies, e-commerce and freelance businesses, tourism, IT services, press and the media, and internet-based cab/delivery services.<sup>41</sup>

Women can also be disproportionately affected, especially in places where their public presence is restricted.<sup>42</sup> A writer and feminist activist from Kashmir who wrote a personal account of the

impact of the internet shutdown in Kashmir in 2016 stated that “[t]he socializ[ation] patterns of women are already restricted in terms of their participation in public life. Social media diminishes the boundaries on such participation and the only window to [the] outside world for many women happens to be social media. I, like many other women, would wait for some male member from the house to return and bring an update on what was happening outside.”<sup>43</sup>

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35 Brian Stauffer, *Shutting Down the Internet to Shut Up Critics*, HUMAN RIGHTS WATCH (2020), <https://www.hrw.org/world-report/2020/country-chapters/global-5>; Sushovan Sircar, *Internet Shutdowns Amplifying Fake News, Rumours: Farmers & Experts*, THE QUINT (Feb. 5, 2021, 9:27 PM), <https://www.thequint.com/cyber/internet-shutdown-at-farmer-protest-sites-amplifying-misinformation-rumours#read-more>.

36 Various reports emerged out of Jammu & Kashmir on how the internet shutdown of August 2019 adversely affected patients' right to health and doctors' right to information. For further information, see Ramani V. Atkuri *et al.*, *Rapid Response to: Indian doctors' leaders demand national law to reduce violence in hospitals*, THE BMJ (Jun. 19, 2019), <https://www.bmj.com/content/365/bmj.l4303/rr>; Meenakshi Ganguly, *Kashmir Shutdown Raises Healthcare Concerns*, HUMAN RIGHTS WATCH (AUG. 30, 2019, 9:01 PM), <https://www.hrw.org/news/2019/08/30/kashmir-shutdown-raises-healthcare-concerns>. The health concerns are particularly distressing when one considers the psychological impact and post-traumatic stress disorder that many ordinary Kashmiris suffer from due to decades of violence and instability in the region. See, *Kashmir Mental Health Survey*, DOCTORS WITHOUT BORDERS (2015), [https://www.msfindia.in/sites/default/files/2016-10/kashmir\\_mental\\_health\\_survey\\_report\\_2015\\_for\\_web.pdf](https://www.msfindia.in/sites/default/files/2016-10/kashmir_mental_health_survey_report_2015_for_web.pdf).

37 Saluja, *supra* note 33.

38 Tora Agarwala, *Taken offline for nine days, Assam realises Internet is much more than social media*, THE INDIAN EXPRESS (Dec. 21, 2019, 4:52 PM), <https://indianexpress.com/article/north-east-india/assam/caa-protests-assam-realises-internet-is-much-more-than-social-media-6177897/>. See also, Interview with a North Kashmiri lawyer activist, in Delhi, India (Jan. 06, 2021) (unofficial translation; name kept anonymous for security purposes). Interviewee spoke about how the delay in their visa application, due to the internet shutdown, and its eventual rejection [I don't think a rejection is associated with lack of internet unless he meant that he could only fill in incomplete details], meant that he was unable to go abroad for further studies. See also, Interview with Mehroosh Shah, Law Student & Researcher, in Delhi, India (Jan. 1, 2021) (unofficial translation). Interviewee elaborated on the difficulty in attending online classes, giving exams, and submitting assignments during the Covid-19 pandemic, due to the restricted 2G internet speed in Jammu and Kashmir.

39 Kathuria *et al.*, *supra* note 18; see also *supra* text accompanying note 5.

40 Using the 'Cost of Shutdown Tool' developed by Netblocks and The Internet Society based on the Brookings Institution Method, Top10VPN calculated that the total cost of internet blackouts and bandwidth throttling of 8,927 hours in 2020 cost the country over US \$2.7 billion. The period of 8,927 hours includes the time for simultaneous internet shutdowns in different regions. See, Samuel Woodhams & Simon Migliano, *The Global Cost of Internet Shutdowns in 2020*, TOP10VPN (Jan. 3, 2021), <https://www.top10vpn.com/cost-of-internet-shutdowns/2020/>. See also, Samreen Ahmad, *Global cost of internet shutdowns \$4 bn in 2020, India share at 70%: report* (Jan. 6, 2021, 9:38 PM), [https://www.business-standard.com/article/economy-policy/global-cost-of-internet-shutdowns-4-bn-in-2020-india-share-at-70-report-121010600972\\_1.html](https://www.business-standard.com/article/economy-policy/global-cost-of-internet-shutdowns-4-bn-in-2020-india-share-at-70-report-121010600972_1.html).

41 Kathuria *et al.*, *supra* note 18.

42 See, Arshie Qureshi, *The New Normal of Living with No Internet in Kashmir*, FEMINISM IN INDIA (Jun. 6, 2017), <https://feminisminindia.com/2017/06/06/living-no-internet-kashmir/>. see also *supra* text accompanying note 20.

43 Qureshi, *supra* note 42.

# III. LEGAL FRAMEWORK FOR INTERNET SHUTDOWNS

The legal framework governing India’s right to control the internet is characterized by various complicated regulations and rules. India’s constitution guarantees the right to freedom of speech and expression under Article 19. The government can only impose limitations on this right “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality...”<sup>44</sup> Even so, the way in which the rules and regulations governing internet shutdowns have been written and enforced has greatly limited the ability of citizens to exercise their right of free speech.

It is important to remember that while the government orders the shutdowns, it is often privately owned telecommunications companies that carry out the order. In 2002, the Indian government allowed for private companies to enter the telecommunications market.<sup>45</sup> Some of these private companies include Reliance Communications, Airtel, and Vodafone among others.<sup>46</sup> Despite being private companies, these service providers “often bear the responsibility of executing government orders to shutdown communications,” as they must “take all steps and provide all facilities, when asked, to enable the government to carry

out interception of communications.”<sup>47</sup> Additionally, due to national security limitations, “it is challenging for telecom operators to discuss in public the implementation” of shutdown requests from certain governments.”<sup>48</sup>

Internet shutdowns are regulated under the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017 (**Telecom Suspension Rules or TSRs**), which authorizes the central or state government to direct—by means of a written and reasoned order—the suspension of telecom services “due to public emergency” or the needs of “public safety.”<sup>49</sup> The TSRs do not define “public emergency” or “public safety,” but reading them in conjunction with section 5(2) of Telegraph Act of 1885, it can reasonably be deduced that interception of communication is permitted only when the interests of sovereignty, the integrity of India or security of the state, relations with foreign states, public order, or preventing the incitement of an offense are implicated.<sup>50</sup> A plain reading of the law demonstrates that simple law and order concerns are not sufficient justification for the suspension of the internet, yet law and order has been used by the government pretextually to justify its internet shutdowns in the recent

44 Constitution of India, Art. 19.

45 K, Lakshminarasimha, and Koshy Jacob Abraham. “Telecom in India—Propelling Digital Growth.” *Forbes India*, ForbesIndia, 3 Dec. 2021, <https://www.forbesindia.com/blog/enterprise/does-indias-telecom-sector-still-need-restrictive-policies/>. (last visited June 2, 2022).

46 *Id.*

47 Srivastava, *supra* note 4 at 7.

48 *Id.*

49 TSP Rules, *supra* note 22, at Rules 1 & 2.

50 Indian Telegraph Act, 1951, Sec. 5.



past. The government's shutdown orders are to be forwarded to a government-constituted three-member Executive Review Committee that shall "record its findings" on whether the orders are in compliance with Section 5(2) of the Telegraph Act.<sup>51</sup> However, even in the case of non-compliance, the Review Committee has no power to set aside the government's orders directing an internet shutdown.<sup>52</sup> Each internet suspension order can last only up to 15 days, although there is no cap on the total duration of an internet shutdown.<sup>53</sup> The constitutionality of the TSRs has been challenged before the Gauhati High Court in Assam, but no substantive hearing has taken place on the issue thus far.<sup>54</sup>

Prior to the promulgation of the Telecom Suspension Rules, there was relative ambiguity around the applicable legal basis for ordering an internet shutdown. In the absence of any express power, governments primarily resorted to policing powers under the Criminal Procedure Code, along with other central legislation to suspend internet services.<sup>55</sup> Notably, however, there has been an increase in internet shutdowns with the implementation of the TSRs, as can be seen from the rising number of shutdowns at the beginning of 2017 as shown in the graphs/figures in the previous section. A recent trend that has emerged is that internet shutdown orders are often accompanied by the issuance of standard prohibitory orders under section 144, Code of Criminal Procedure ("CrPC") 1973, which impose restrictions on the movement

of people and on public gatherings to prevent "obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray."<sup>56</sup>

The legal framework for the suspension of internet services assumed prominence in January 2020 when the Supreme Court in *Anuradha Bhasin v Union of India & Ors.* declared that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, and the right to carry on any trade or business under 19(1)(g) of the Constitution, "using the medium of internet [were] constitutionally protected."<sup>57</sup> The Court made it clear that it was not expressing any view on whether the right to access the internet was an independent fundamental right,<sup>58</sup> although the Kerala High Court previously ruled on this issue, stating that "the right to have access to Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India."<sup>59</sup> The Supreme Court directed the proactive publication of internet shutdown orders by the government and periodic review of these orders by the Review Committee.<sup>60</sup> It also clarified that an indefinite suspension of the internet would be disproportionate, and directed the government to review all internet shutdown orders.<sup>61</sup> Of note, the Supreme Court did not provide any specific relief to the people of Jammu and Kashmir affected by the internet

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51 *Id.* at Rule 419-A(17).

52 *Id.* at Rule 419-A(16).

53 TSP Rules Amendments, 2020, Rule 2A. Department of Telecommunications, Notification New Delhi, the 10<sup>th</sup> November, 2020, <https://dot.gov.in/accessservices/temporary-suspension-telecom-services-amendment-rules-2020>.

54 *Ajit Kumar Bhuyan v. State of Assam & Ors.*, PIL No. 79/2019 (2019) (India). *See also*, Kanimozhi Sudhakar, *Anti-CAA Stir: Gauhati HC Asks Assam Govt to Restore Internet Services*, INDIA.COM (Dec. 19, 2019), <https://www.india.com/news/india/anti-caa-stir-gauhati-high-court-asks-assam-govt-to-restore-mobile-internet-broadband-services-by-5-pm-today-3882900/>.

55 Lawyers have noted that in the absence of an enabling legislative framework, governments would shut down the internet either through (a) policing powers under Section 144 of the Code of Criminal Procedure, 1973 (which was the preferred mode); (b) blocking powers under Section 69A of the Information Technology Act, 2000; or (c) the interception powers under Section 5(2) of the Telegraph Act, 1885. *See*, Nakul Nayak, *The Legal Disconnect: An Analysis of India's Internet Shutdown Laws* (IFF, Working Paper No. 1, 2018).

56 *Bhasin v Union of India*, W.P. (C) No. 1031/2019, para. 4 (2020) (India).

57 *Id.* at para. 26.

58 *Id.* at para. 28.

59 *Faheema Shirin R.K. v State of Kerala*, which had recognised that restriction of use of mobile phones in a women's hostel is an infringement of right to internet, right to privacy and education. *Faheema Shirin R.K. v. State of Kerala*, WP(C). No.19716 (2019) (India).

60 *Bhasin v Union of India*, *supra* note 56.

61 *Id.*

shutdown, leading some lawyers to term the judgment a “missed opportunity.”<sup>62</sup>

Nonetheless, the Supreme Court’s direction for proactive publication was a positive step towards transparency and accountability in an environment in which many shutdown orders relied on “deniability,” meaning that government officials would maintain that such orders were not issued from their offices.<sup>63</sup> However, right to information requests filed by digital rights organizations in India disclose that some states have failed to comply with the judgment of the Supreme Court in *Anuradha Bhasin*, citing certain security-related exceptions.<sup>64</sup>

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62 See Generally, Devdutta Mukhopadhyay & Apar Gupta, *Jammu & Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age*, 9 INDIAN J. CONST. L. 207 (2020).

63 In the context of the 2016 internet shutdown in Jammu & Kashmir, the Jammu Kashmir Coalition of Civil Society noted that “Such orders are also subject to official deniability: in response to a Right to Information query, asking for copies of orders which formed the basis of the shutdowns of internet and telephone services in July 2016, both the Home Department, Jammu & Kashmir (in charge of the Police) and the Divisional Commissioner, Kashmir (the highest executive authority in the Kashmir districts) stated that no such orders were issued by their office.” Jammu Kashmir Coalition of Civil Society, *Kashmir’s Internet Siege*, at 8 (Aug. 2020) <https://jkccs.net/report-kashmirs-internet-siege/assets/Kashmirs-Internet-Siege-18MB.pdf>. Similarly, Right to Information requests were filed seeking details of the ongoing internet shutdown in Darjeeling, West Bengal in 2017 (that lasted 100 days) as well as copies of the shutdown orders. However, the government rejected the information request claiming certain exemptions. See, *No More Shutdowns*, SFLC (2017), <https://sflc.in/rti-darjeeling-internet-ban-3-months-and-counting>.

64 See, *RTI responses from Andhra Pradesh and Gujarat show compliance failure with the Anuradha Bhasin Internet Shutdown Decision*, INTERNET FREEDOM FOUNDATION (Nov. 10, 2020), <https://internetfreedom.in/rti-responses-from-andhra-pradesh-and-gujarat-show-compliance-failure-with-the-anuradha-bhasin-internet-shutdown-decision/>. See also, *6 months after Anuradha Bhasin v. Uol, state governments are still not publishing internet shutdown orders #KeepUsOnline*, INTERNET FREEDOM FOUNDATION (JULY 14, 2020), <https://internetfreedom.in/publication-internet-shutdown-orders/>.

# ■ IV. JAMMU AND KASHMIR: INDIA'S LONGEST INTERNET SHUTDOWN

“ Dear Customer,  
As per the Government  
instructions, the internet  
services have been  
temporarily stopped  
in your area. ”<sup>65</sup>



This was the text message reportedly received by the residents of Jammu and Kashmir on August 4, 2019, when a communications blockade was imposed on the entire region, one day prior to the bifurcation of the state of Jammu and Kashmir into the Union Territory of Jammu and Kashmir and Ladakh.<sup>66</sup> On the

morning of August 5, 2019, a complete communications blackout was imposed—no phones or landlines were working, no SMS texts could be sent, mobile and broadband internet was shut down, the postal services stopped functioning, and many cable TV channels were cut off.<sup>67</sup> No formal orders were available in the public domain.<sup>68</sup> There was no clarity on when any of these services would be resumed. In addition, the entire region was placed under a curfew involving the heavy deployment of security and police forces and placement of concertina wires, and top political leaders, activists, and even the president of the Jammu and Kashmir Bar Association were detained.<sup>69</sup> Kashmir was cast into an “information black hole that made it very difficult to discern what was

<sup>65</sup> Krishnani, *supra* note 11.

<sup>66</sup> On August 5, 2019, Article 370 of the Indian Constitution, which provided special status and certain autonomy to Jammu & Kashmir, including having its own Constitution, was abrogated. See, *Article 370: What happened with Kashmir and why it matters*, BBC (Aug. 6, 2019), <https://www.bbc.com/news/world-asia-india-49234708>.

<sup>67</sup> Jeffrey Gettleman et al., *India Revokes Kashmir's Special Status, Raising Fear of Unrest*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html>. See also, Interview with BI, Print Journalist from Srinagar, Jammu, and Kashmir (Dec. 21, 2020) (name kept anonymous for security purposes). BI said, “We realized in the morning [of Aug. 5] that there is complete blackout – our phones were not working, internet was not working, landline connections were not working. Even at my house, Cable TV was also not working. It was completely strange.”

<sup>68</sup> Indian Express, *Jammu and Kashmir Petition in the Supreme Court Seeking Removal of Restrictions on Media* (Aug 10, 2019) <https://indianexpress.com/article/india/jammu-kashmir-petition-in-supreme-court-seeking-removal-of-restrictions-on-media-5894745/>.

<sup>69</sup> Jammu Kashmir Coalition of Civil Society, *Kashmir's Internet Siege*, at 49; 50; 60; 72 (Aug. 2020), <https://jkccs.net/report-kashmir-internet-siege/assets/Kashmir-Internet-Siege-18MB.pdf>. See also, Arshi Aggarwal, *Kashmir: Eid passes peacefully barring stray incidents, says Govt*, INDIA TODAY (Aug. 12, 2019), <https://www.indiatoday.in/india/story/kashmir-live-updates-eid-ul-azha-in-jammu-and-kashmir-restrictions-curfew-continue-1579871-2019-08-12>.

unfolding.”<sup>70</sup>

### a. A History of the Shutdowns

Jammu and Kashmir has experienced several internet shutdowns and digital curfews. Of the 528 documented shutdowns in India since 2012, 308 have reportedly been in both regions.<sup>71</sup> In 2010, SMS messages were banned throughout the Kashmir Valley for around four years, with the ban being lifted only in May 2014—by which time many Kashmiris had switched to WhatsApp.<sup>72</sup>

In July 2016, following the killing of a militant and the eruption of simultaneous protests, post-paid and pre-paid mobile internet services were suspended for four to six months as a preventive measure to avoid any disruptions of law and order and to control rumormongering.<sup>73</sup> Phone services were also suspended for a shorter period, although the broadband services of the state-owned telecommunications service provider, BSNL,<sup>74</sup> mostly functioned throughout this period.<sup>75</sup>

However, the communications blockade in 2019, even though reportedly the 53<sup>rd</sup> such shutdown in Kashmir that year,<sup>76</sup> was much bigger in scale and nature than anything Kashmiris had experienced in the past.<sup>77</sup> The internet shutdown in Jammu and Kashmir lasted for 213 days—from August 4, 2019 to March 4, 2020—with some partial whitelisting of websites at the beginning of January 2020.<sup>78</sup> However, even after that, access to mobile internet continued to be restricted to 2G speeds until February 5, 2021. This blockade was instituted during the COVID-19 pandemic, at a time when it was imperative to ensure access to online information. The suspension or restriction of high-speed mobile internet in Jammu and Kashmir lasted for around 550 days.<sup>79</sup> The mandate of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and other UN Special Procedures mandates termed the communications blackout in Jammu and Kashmir “a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating

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70 Jeffrey Gettleman *et al.*, *India Revokes Kashmir’s Special Status, Raising Fear of Unrest*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html>. While talking about the impact of the communication blockade on the average Kashmiri, *Time* reported, “[m]any of them will not even know that on Monday morning, Indian Home Minister Amit Shah announced to Parliament that the Indian government would strip their state of the special status that it held under the Indian Constitution for the last 70 years.” Fahad Shah, *‘Anxiety fills the air’: What It’s Like Inside Kashmir When All Communication With the Outside World Is Cut Off*, TIME (Aug. 7, 2019), <https://time.com/5646005/inside-kashmir-communication-shutdown>.

71 *India’s Shutdown Numbers*, *supra* note 14.

72 The SMS ban was imposed in response to protests around the Valley following the death of a child and some young protestors at the hands of the security forces. See Betwa Sharma, *By the time Kashmir lifted its texting ban, Kashmiris had moved on to WhatsApp*, QUARTZ (May 22, 2014), <https://qz.com/212205/by-the-time-kashmir-lifted-its-texting-ban-kashmiris-had-moved-on-to-whatsapp/>; Shuja ul Haq, *Government lifts ban on SMSes in Kashmir after 4 years*, INDIA TODAY (May 20, 2014), <https://www.indiatoday.in/india/north/story/government-lifts-ban-on-smses-in-kashmir-after-4-years-193745-2014-05-20>.

73 Post-paid mobile internet services were suspended in parts of Kashmir for around four months, being restored around in November 2016, while pre-paid mobile internet services were only restored in January 2017. See, Off. of the U.N. High Comm’r for Hum. Rts., Rep. on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and the General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan (June 14, 2018), <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>. See also, *Prepaid mobile internet services restored in Kashmir after six months*, SCROLL.IN (Jan. 28, 2017), <https://scroll.in/latest/827906/prepaid-mobile-internet-services-restored-in-kashmir-after-six-months>.

74 Bharat Sanchar Nigam Limited.

75 JAMMU KASHMIR COAL. OF CIV. SOC’Y, ANNUAL REPORT 2017: A REVIEW OF HUMAN RIGHTS IN JAMMU AND KASHMIR 32–33 (JKCCS 2017).

76 Shah, *supra* note 70; see also *supra* text accompanying note 14.

77 *Kashmir’s Internet Siege*, *supra* note 6 at 85.

78 *India restores internet in Kashmir, with conditions*, DW (Mar. 5, 2020), <https://www.dw.com/en/india-restores-internet-access-in-kashmir-with-conditions/a-52643554>. See, J&K: *Restrictions on high-speed internet extended till March 4, authorities whitelist 1,674 websites*, SCROLL.IN (Feb. 25, 2020, 1:27 PM), <https://scroll.in/latest/954257/j-k-restrictions-on-high-speed-internet-extended-till-march-4-authorities-whitelist-1674-websites> (showing a brief timeline of the increase in the number of whitelisted websites from 153 on January 18, 2020, to 1674 on February 24, 2020).

79 *India restoring fast mobile internet in Kashmir after 18 months*, REUTERS, (Feb. 5, 2021, 11:23 AM), <https://www.reuters.com/world/india/india-restoring-fast-mobile-internet-kashmir-after-18-months-2021-02-05/>.



offence.”<sup>80</sup>

Similarly, HRDs in Kashmir experienced the 2019 shutdown differently than they did the 2016 shutdown. According to a Kashmiri journalist working with a local newspaper, unlike in 2016, the 2019 shutdown was “planned by the State”; it was “wide-ranging, massive and indiscriminate”; and was a “collective punishment” imposed on all the people of Jammu and Kashmir to “tire” them out. It was not just an internet shutdown, but an “information clampdown” designed to stop information about human rights violations from being reported.<sup>81</sup>

Unlike in 2016, the internet shutdown in 2019 was preceded by a huge military buildup. Landlines and the state-owned broadband services were shut down, and the curfews were much stricter. The communications blockade in 2019 severely impeded access to health<sup>82</sup> and emergency<sup>83</sup> services. The SMS ban—reportedly imposed to stop rumormongering and its misuse by “anti-national elements”<sup>84</sup>—meant that people could not access OTPs (one-time passwords) on their phones, which are often necessary for online payments and transactions, government filings, and educational

applications.<sup>85</sup> At one point, in November 2019, when broadband was resumed in Jammu (but not Kashmir), hundreds of Kashmiris would take the train—dubbed the “Internet Express”—to Banihal, a town in Jammu, to line up at the cybercafes that provided access to internet services.<sup>86</sup>

The internet shutdown imposed other social, psychological, and humanitarian costs on the people of Kashmir, impacted their livelihoods, and limited the ability of HRDs to engage in their work during a crisis situation that especially required them to take action.

#### **b. Impact of the Blockade on Detainees, Criminal Defense Attorneys, and the Families of Detainees**

The internet blockade not only impacted average citizens, but it also had a severe impact on the increasing number of HRDs and community leaders being detained by the governmental authorities. This impact was felt acutely by a Kashmiri lawyer and activist, Amir, who was interviewed for this report. A member of Amir’s family was in detention prior to the shutdown. After August 5, 2019, many prisoners were moved to jails outside Jammu and Kashmir. However, because of the “curfewed

80 U. N. Human Rights Office of the High Commissioner, UN RIGHTS EXPERTS URGE INDIA TO END COMMUNICATION SHUTDOWN IN KASHMIR (Aug. 22, 2019), <https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>.

81 Interview with a journalist based out of Srinagar, J&K, working with a local newspaper (Jan. 15, 2021) (unofficial translation) (name kept anonymous for security purposes).

82 Various reports emerged out of Jammu & Kashmir during the internet shutdown of August 2019, when the delayed access to health services due to the internet shutdown resulted in the deterioration or even death of patients. See, Fahad Shah, ‘Anxiety Fills the Air’ What It’s Like Inside Kashmir When All Communication With the Outside World Is Cut Off, TIME (Aug. 7, 2019, 2:43 PM), <https://time.com/5646005/inside-kashmir-communication-shutdown/>; Adil Akhzer, In Srinagar lockdown, how a reporter got news of his sister’s miscarriage, THE INDIAN EXPRESS (Aug. 29, 2019, 7:19 AM), <https://indianexpress.com/article/opinion/columns/kashmir-lockdown-article-370-35a-bjp-congress-amit-shah-medicine-shortage-5942564/>.

83 Reports documented how the communication blackout in Jammu & Kashmir on August 2019 prevented people from accessing essential services, such as the fire or ambulance service, because even the phone lines in the fire and emergency services headquarters were dead. People also had no way to call the emergency numbers, such as 100 (the equivalent to 911 in the US). See, Fahad Shah, Injured, pregnant Kashmiris cut off from emergency aid as phone lines go dead in Modi’s communications blackout, SOUTH CHINA MORNING POST (Aug. 25, 2019, 4:01 PM), <https://www.scmp.com/news/asia/south-asia/article/3024224/injured-pregnant-kashmiris-cut-emergency-aid-phone-lines-go>; Adil Akhzer, In Srinagar lockdown, how a reporter got news of his sister’s miscarriage, THE INDIAN EXPRESS (Aug. 29, 2019, 7:19 AM), <https://indianexpress.com/article/opinion/columns/kashmir-lockdown-article-370-35a-bjp-congress-amit-shah-medicine-shortage-5942564/>. See also, Interview with Fahad Shah, Journalist & Editor of the *The Kashmir Walla*, in Srinagar, India (Feb. 14, 2021).

84 Suspension of SMS facility in Kashmir affects services of several sectors, THE ECONOMIC TIMES (Dec. 10, 2019, 5:43 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/suspension-of-sms-facility-in-kashmir-affects-services-of-several-sectors/articleshow/72458385.cms>.

85 Suspension of SMS facility in Kashmir affects services of several sectors, *supra* note 84; see also *supra* text accompanying note 6 at 76.

86 See, Athar Parvaiz, No web, no jobs: Kashmiris board the ‘Internet Express,’ REUTERS (Jan. 13, 2020), <https://www.reuters.com/article/india-kashmir-internet-idUKL8N29710F>; Aakash Hassan, Internet express: On the Train That Takes Kashmiris Online for a Few Hours Each Day, NEWS 18 (Dec. 15, 2019, 3:29 PM), <https://www.news18.com/news/india/internet-express-a-train-that-takes-kashmiris-online-for-a-few-hours-each-day-2424921.html>.



lockdown” and the feeling of “*complete disconnect from the rest of the world*,” Amir was unable to obtain any information about the whereabouts of his family member, get in touch with them, or go to the jail where they had been held in detention up to that point.

It was only after a couple of months of “anxiety” and “trauma” and trying to find information by going to Delhi that Amir learned that his family member had been moved to a prison in Uttar Pradesh. Amir pointed out, however, that many detained activists lack political connections and that they may die in prison, where their “stories die with them.”<sup>87</sup>

When Amir visited Delhi to collect more information, he discovered that his family could only speak to their detained relative using a landline set up by the district administration or the local police, as neither his family nor most people in his village owned a landline. Amir viewed landlines as a “privilege of the elite.” The number of estimated landlines in Jammu and Kashmir is between 96,000 and 100,000, as compared to 11.3 million mobile subscribers.<sup>88</sup>

This meant that people, such as one of Amir’s parents, had to start queueing at the local police station at 9:00 am, and only got a chance to call their loved one at around 3:00 or 3:30 pm, and then for

only a few minutes.<sup>89</sup> The fact that conversations had to take place in a police station meant that discussing any sensitive information concerning their legal defense was almost impossible. Amir summed up his experience with an Urdu couplet, “*Jis haal mein jeena mushkil hai, us haal mein jeena laazim hai*” (“*the state in which it is difficult to live, is the state in which one has to live*”).<sup>90</sup> Not only does this practice have a severe impact on the right to freedom of expression, but it also impacts the right to a fair trial and to due process for those facing criminal charges. The secretive movement of Kashmiri detainees to far-flung parts of the country and the inability of family or lawyers to visit those prisons, along with the monitoring of phone calls made or received by the detainee, all create an environment in which the detainee cannot properly mount a criminal defense, rendering their right to a fair trial null and void.

During the initial months of the communications blockade, the only persons who could access any phone were those with some connection to high-ranking official.<sup>91</sup> The information blackout also led Mirza Saib Beg, a lawyer and student in England, to fly to India in August 2019 to meet groups in Delhi in order to understand the reality on the ground as best as he could from outside Kashmir.<sup>92</sup> In the initial days and weeks after August 5, the only information coming out of Kashmir—whether

87 Interview with Amir, Kashmiri Lawyer and Activist, (Jan. 6, 2021) (unofficial translation) (name changed for security purposes).

88 Jammu Kashmir Coalition of Civil Society, *Kashmir’s Internet Siege*, at 76 (Aug. 2020), <https://jkccs.net/report-kashmirs-internet-siege/assets/Kashmirs-Internet-Siege-18MB.pdf>. See also, Sheikh Oayoom, *BSNL landline turns lifeline for communication-starved Kashmiris*, YAHOO! NEWS (Aug. 26, 2019), [https://in.news.yahoo.com/bsnl-landline-turns-lifeline-communication-040507031.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly9kdWNrZHVja2dvLmNvbS8\\_cT1udW1iZXIrb2YrbGFuZGxpbmUraW5jcmVhc2UyYXZlYXVndXN0KzlwMTkra2FzaG1pciZpYT13ZWl&guce\\_referrer\\_sig=AQAAAA0dW1yZxfNPgNUaKQbQpZREH4SybT4ycD3qYutQoQLOzFVxS-ccb8\\_FFtC-cXg4x9Bo6TzXfMvAUUnEwBeXabqjM1rfT\\_fGpPXWPHi4Ho0l-X5VeIUtbFa9hLUjAVQOxTNn7hB0djFv-LFfh9XdSO3j-Ao10wfrxeXC5VhdhAqa5](https://in.news.yahoo.com/bsnl-landline-turns-lifeline-communication-040507031.html?guccounter=1&guce_referrer=aHR0cHM6Ly9kdWNrZHVja2dvLmNvbS8_cT1udW1iZXIrb2YrbGFuZGxpbmUraW5jcmVhc2UyYXZlYXVndXN0KzlwMTkra2FzaG1pciZpYT13ZWl&guce_referrer_sig=AQAAAA0dW1yZxfNPgNUaKQbQpZREH4SybT4ycD3qYutQoQLOzFVxS-ccb8_FFtC-cXg4x9Bo6TzXfMvAUUnEwBeXabqjM1rfT_fGpPXWPHi4Ho0l-X5VeIUtbFa9hLUjAVQOxTNn7hB0djFv-LFfh9XdSO3j-Ao10wfrxeXC5VhdhAqa5). In fact, newspaper reports indicate that, while the mobile subscriber base reduced from 11.6 million to 11.3 million between July and September 2019, there was an increase in the number of landline connections from 1,073 new additions in August to 14,731 additions in September 2019. See, Sindhu Hariharan, *Landlines get a boost in J&K as shutdown affects mobile networks*, THE TIMES OF INDIA (Nov. 27, 2019, 11:29 AM), <https://timesofindia.indiatimes.com/business/india-business/landlines-get-a-boost-in-jk-as-shutdown-affects-mobile-networks/articleshow/72248368.cms>.

89 Interview on Jan. 06, 2021 (unofficial translation) (name changed for security purposes). Others, such as Mirza Said Beg, also said that people had to travel to the local police station to place a phone call, where they had no privacy and had to stand for hours in the line to have a short one-minute conversation. Interview with Mirza Said Beg, Lawyer & Oxford Public Policy Student, U.K. (Dec. 20, 2019); see also *supra* text accompanying note 86.

90 Interview with Amir, *supra* note 87.

91 Interview with a journalist based out of Srinagar, J&K, (Jan. 03, 2021) (name kept anonymous for security purposes). See also, Shahnaz Bashir, *The Indian Government Insists All Is Well in Kashmir. But As the Communications Shutdown Continues, Its Citizens Are Struggling to Reach the Outside World*, TIME (Aug. 23, 2019, 12:26 PM), <https://time.com/5659671/kashmir-indian-government/>. Bashir’s article talks about a government officer, who had the only functional internet connection in his office, collecting and conveying messages from his neighbors to their relatives outside Kashmir.

92 Interview with Mirza Said Beg, *supra* note 89.

about the scale of the arrests and detentions, the curtailment of civil liberties, or stories of police excesses—came from human sources outside India. Given the high level of risk, the threat of detention and/or physical surveillance, and the fear of online communications being monitored, people were “paranoid” and did not feel comfortable speaking on the phone. For all these reasons, Beg decided to travel to India and meet people in person to document human rights violations.<sup>93</sup>

### c. Impact of the Internet Blockade on Independent Media

The internet blockade in Jammu and Kashmir did not take place in isolation. It was accompanied by a physical blockade as the result of orders passed under Section 144, CrPC, restricting the movement of people and public gatherings as a preventive measure to avoid violence.<sup>94</sup>

Before the Supreme Court, Anuradha Bhasin stated that the physical lockdown (a “de facto curfew”), combined with the internet blackout and severe restrictions on movement meant that her paper (the *Kashmir Times*’ Srinagar edition) could not be distributed on August 5, 2019 and could not be published between August 6 and October 11, 2019, “as newspaper publication necessarily requires news gathering by reporters travelling across the Valley and unhindered interaction with public and officials.”<sup>95</sup> Even after October 11, only a “truncated copy” of the paper was published (with internet and SMS services completely shut down) and its online news website was “frozen.”<sup>96</sup>

Online publications, which had no alternative means of publishing, were hit even harder.<sup>97</sup>

As Fahad Shah, the founder and editor of the *Kashmir Walla* magazine put it:

“In August 2019, when the Indian government abrogated the special status of Kashmir and imposed a clampdown with no communications, our whole organization came to a halt. Our internet audience went to zero, and we couldn’t update our website for five months. We lost all the money we had.”<sup>98</sup>

Similarly, at the relaunch of *Free Press Kashmir*, a weekly published from Kashmir, on Press Freedom Day (May 3, 2020), nine months after a “forced closure,” the editor stated:

“We are shut for over nine months because of the internet shutdown, on which our output depends, and because the ads have stopped as the economy is in ruins. We do not depend on the state for revenue. Our primary source of income is the online private adverts, which have dried up completely.”<sup>99</sup>

The shutdown caused both direct and indirect censorship. There was no local audience for Kashmir-focused publications; in addition, the curfew made it difficult for people to reach their offices and the shutdown of telephone lines cut off communication with sources.<sup>100</sup> The indirect censorship arose because the publications’ “economic and revenue model...shattered” when all of the advertisers stopped running ads.<sup>101</sup> Many newspapers rely on government advertisements as a source of revenue,<sup>102</sup> but digital media does not have similar sources, forcing many of them to move to subscription-based models.<sup>103</sup>

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93 *Id.*

94 Bhasin v. Union of India, *supra* note 56 at 4.

95 *Id.* at 149

96 *Id.*

97 Shah, *supra* note 70.

98 Maria Bustillos, *How one Kashmiri magazine survived a press crackdown*, COLUMBIA JOURNALISM REVIEW (Feb. 13, 2020), [https://www.cjr.org/q\\_and\\_a/fahad-shah-kashmir-walla.php](https://www.cjr.org/q_and_a/fahad-shah-kashmir-walla.php)

99 FREE PRESS KASHMIR, <https://freepresskashmir.news/about-us/support-the-free-press/> (last visited July 22, 2021).

100 Interview in Srinagar, Jammu, and Kashmir, India, *supra* note 81.

101 *Id.*

102 Zafar Aafaq, *We may have to shut down permanently’: Online Media In Kashmir Has Come to a Grinding Halt*, THE POLIS PROJECT (Oct. 2, 2019), <https://www.thepolisproject.com/read/we-may-have-to-shut-down-permanently-online-media-in-kashmir-has-come-to-a-grinding-halt-by-zafar-aafaq/>.

103 Bustillos, *supra* note 98.

## i. Challenges in Information Collection

Subsequent to August 5, many journalists were unable to collect information as they otherwise would have. Due to the imposition of emergency provisions, roadblocks, and travel restrictions, journalists were unable to travel in order to explore stories further. A trip to the Press Club which would otherwise take a few minutes could take hours while journalists negotiated various roadblocks and checkpoints. When the announcement of the revocation of autonomous status for Kashmir was made, journalists from the region were watching the news from other parts of the country, many wondering, “What will we report, we don’t know anything about what has happened on the ground, except that we just managed after so much time to cross three km to enter Press Club?[sic]”<sup>104</sup>

Another journalist reported that the government had “cut off all communications lines to newspaper offices...” and that journalists “didn’t know what the state administration was doing” during one of the most significant political changes to ever occur in Jammu and Kashmir.<sup>105</sup> As one editor reported, not only was it nearly impossible for journalists to get to the newspaper offices or Press Club due to physical roadblocks and closures, but the internet shutdown exacerbated the problem, as they were not able to do any form of information-gathering or fact-checking.<sup>106</sup> This raised a debate about whether the newspapers could or should publish without the ability to conduct independent fact-checking.

Junaid Kathju, a reporter with the newspaper *Rising Kashmir* described how some journalists found a satellite TV in a hotel that was broadcasting the proceedings in the Indian Parliament in order to “have the first glimpses of the day’s events.”<sup>107</sup> Instead of reporting from the ground, the reporters based their stories on the televised proceedings and managed to publish a four-page issue the next day. Kathju’s newspaper was reportedly one of only four dailies out of the roughly 55 dailies in Kashmir to be published on August 6, 2019.<sup>108</sup>

During the lengthy internet shutdown, journalists were cut off from their sources, especially in rural areas and in areas outside Srinagar, and they did not have access to ground reports.<sup>109</sup> The only way news could travel was by word of mouth, which is why many journalists were either at the Kashmir Press Club or the Media Facilitation Centre, the latter established by the government to provide internet access for journalists, often leaving messages for each other as in pre-digital days.<sup>110</sup>

Independent, on-the-ground information collection was very difficult, particularly concerning the state’s use of force during this period. Only a few reporters were able to document cases of excessive use of force by the authorities, and they relied on information conveyed by family members of individuals subjected to human rights violations. For instance, both Fahad Shah and Quratulain Rehbar reported stories of men with pellet wounds who were in the Shri Maharaja Hari

104 Interview in Srinagar, Jammu, and Kashmir, India, *supra* note 67.

105 Junaid Kathju, *Memory of a day that wasn’t*, FREE PRESS KASHMIR (Jun. 9, 2020), <https://freepresskashmir.news/2020/06/09/memory-of-a-day-that-wasnt/>.

106 *Id.*

107 *Id.*

108 *Id.*

109 See, Zafar Aafaq, *‘We may have to shut down permanently’: Online Media in Kashmir Has Come to a Grinding Halt*, THE POLIS PROJECT, <https://www.thepolisproject.com/read/we-may-have-to-shut-down-permanently-online-media-in-kashmir-has-come-to-a-grinding-halt-by-zafar-aafaq/> (last visited July 22, 2021); Pallavi Sareen, *In J&K, More International News on the Front Pages Than News on Kashmir*, THE WIRE (Oct. 1, 2019), <https://thewire.in/media/in-jk-more-international-news-on-front-pages-than-news-on-kashmir>.

110 Interview with Fahad Shah, Journalist & Editor of the *‘Kashmirwallah,’* in Srinagar, India (Feb. 14, 2021); Interview with a journalist in Srinagar, Jammu, and Kashmir, India (Dec. 21, 2021) (name kept anonymous for security purposes). See also, Zafar Aafaq, *‘We may have to shut down permanently’: Online Media in Kashmir Has Come to a Grinding Halt*, THE POLIS PROJECT, <https://www.thepolisproject.com/read/we-may-have-to-shut-down-permanently-online-media-in-kashmir-has-come-to-a-grinding-halt-by-zafar-aafaq/> (last visited July 22, 2021); Fahad Shah, *Reporting on the silence of siege in Kashmir*, SOUTH CHINA MORNING POST (Oct. 20, 2019, 4:00 PM), <https://www.scmp.com/week-asia/opinion/article/3033708/reporting-silence-siege-kashmir>.

Singh Hospital in Srinagar, although government officials had denied using pellet guns.<sup>111</sup> In Rehbar’s experience, some families in Shopian also documented instances of human rights violations, which they would pass on to reporters who came to meet them through the Chinese app ShareIt, which allows media transfers without the internet but has subsequently been banned in India.<sup>112</sup> Further, families often requested journalists not to publish their stories, fearing retaliation by the state.<sup>113</sup> The fear of state pressure also led some local publications to self-censor,<sup>114</sup> while other journalists were reportedly prevented from taking photos and videos<sup>115</sup>—further stifling the space for people-oriented stories from the ground. News publications were reportedly forced to rely on the daily government bulletins for information, with no means of verifying it or of determining which stories were omitted from the bulletins.<sup>116</sup> The only sources available to journalists in some instances were the administration’s press conferences or the bulletins put out by the Information and Public Relations Department at the Media Facilitation Centre.<sup>117</sup> As one respondent explained: the internet shutdown was a manifestation and an “expansion” of the dissent-stifling environment created by the government, in which journalists and citizens are “forced to depend on the

information circulated by the government.”<sup>118</sup>

For all these reasons, some of the respondents interviewed believed that the true scale of arrests and detentions in the aftermath of the internet blockade was unknown,<sup>119</sup> and that many stories had gone unreported, especially in other parts of Jammu and Kashmir, and were possibly lost forever.<sup>120</sup> In fact, *Free Press Kashmir* started a “Memory Project,” through which it aimed “to recreate the clampdown through people’s memories and document lived experiences of a people under siege.”<sup>121</sup> This project can be understood as a way to document memories that may have been lost during the internet blockade, rather than serving a reportage function.<sup>122</sup>

## ii. Challenges in Information Dissemination

In August 2019, the local administration established a Media Facilitation Centre at the Sarovar Portico Hotel in Srinagar, initially with four computers, one phone, and internet, with the number of these resources increasing later. The center was later shifted to the jurisdiction of the Jammu and Kashmir Department of Information and Public Relations.<sup>123</sup> The government stated that the purpose of the center was to ensure that journalists could

111 Shah, *supra* note 70; see also *supra* text accompanying note 6 at 48.

112 Jammu Kashmir Coalition of Civil Society, *Kashmir’s Internet Siege*, at 48 (Aug. 2020), <https://jkccs.net/report-kashmir-internet-siege/assets/Kashmir-Internet-Siege-18MB.pdf>. See also, *Local Kashmiri apps help plug the hole left behind by SHAREit ban: Report*, DECCAN HERALD (Jul. 25, 2020, 16:54 IST), <https://www.deccanherald.com/national/local-kashmiri-apps-help-plug-the-hole-left-behind-by-shareit-ban-report-865551.html>.

113 Interview in Srinagar, Jammu, and Kashmir, India, *supra* note 81.

114 Interview with a journalist in Srinagar, Jammu & Kashmir, India, *supra* note 81; see also *supra* text accompanying note 102.

115 *Kashmir journalists struggle to tell their stories amid clampdown*, ALJAZEERA (Aug. 7, 2019), <https://www.aljazeera.com/news/2019/8/7/kashmir-journalists-struggle-to-tell-their-stories-amid-clampdown>.

116 Aafaq, *supra* note 102.

117 Interview in Srinagar, Jammu, and Kashmir, *supra* note 113.

118 *Id.*

119 Interview with Mirza Said Beg, *supra* note 89.

120 Interview with a journalist based out of Srinagar, Jammu & Kashmir, India, *supra* note 91; see also *supra* text accompanying note; see also *supra* text accompanying note 83.

121 Zeenish Imroz, *Memory: Strangled academic dreams and a never ending nightmare*, FREE PRESS KASHMIR (May 20, 2020), <https://freepresskashmir.news/2020/05/20/memory-strangled-academic-dreams-and-a-never-ending-nightmare/>; see also *supra* text accompanying note 99.

122 Junaid Kathju, *Memory of a day that wasn’t*, FREE PRESS KASHMIR (Jun. 9, 2020), <https://freepresskashmir.news/2020/06/09/memory-of-a-day-that-wasnt/>; Khalid Bashir Gura, *Memory: Hearts and minds under siege*, FREE PRESS KASHMIR (Aug. 5, 2020), <https://freepresskashmir.news/2020/08/05/memory-hearts-and-minds-under-siege/>.

123 Quratulain Rehbar, *Srinagar Media Facilitation Centre: Now, Freelancers, Web Journalists Not Allowed*, THE WIRE (Nov. 11, 2019), <https://thewire.in/media/srinagar-media-facilitation-centre-freelancers-web-journalists-not-allowed>; Aakash Hassan, *30 Days After Abrogation of Article 370, Kashmir Scrambles for Signals*, NEWS 18, <https://www.news18.com/news/immersive/kashmir-communication-blackout.html> (last visited July 22, 2021).



function without any problems;<sup>124</sup> however, many journalists viewed the center—where they entered their names in a register and showed their ID cards, and where security officials were present—as a site for surveillance. They feared that their online activity was monitored, and their email passwords would be compromised.<sup>125</sup>

Some journalists had no choice but to continue going to the center because it was the only way they were able to do and keep their jobs.<sup>126</sup> Journalists used the Media Facilitation Centre primarily as a place to check emails and send their stories, rather than to search the internet for information. The long queues at the center, combined with the limited number of computers, meant that journalists could not spend a long time on the computers.<sup>127</sup> In fact, to save time, some journalists would write all their emails in advance on their laptops, save them in one document and transfer it to a pen drive, which was then used on the Media Facilitation Centre computer.<sup>128</sup> Others decided to avoid going to the center altogether.<sup>129</sup>

In September 2019, the government announced that only journalists accredited with the local administration could use the center, leaving freelance journalists in the lurch. As the *Indian Express* reported, entry for all non-accredited journalists, including journalists from Delhi and foreign journalists, was restricted. This notice was reportedly later withdrawn.<sup>130</sup> However, once again on November 11, 2019,

journalist Aakash Hassan tweeted:<sup>131</sup>

“I have been barred from the Media facilitation centre--the only place for journalists to access the internet at in [#Kashmir](#). The officials of [@diprjk](#) told me that journalists working as freelancers or reporting for websites or monthly magazines are not allowed inside.”

“I am leaving the centre. This is yet another humiliation for journalists in Kashmir.”



Figure 5. Two tweets by Aakash Hassan, dated November 11, 2019. See Footnote 131.

With these challenges to information dissemination, the communications blockade gave rise to what Mehroosh Shah termed the phenomenon of “pen drive journalism.”<sup>132</sup> All stories in Kashmir were written and saved on pen drives and certain individuals would travel

124 The Government states that “[m]edia Professional Centers have also been established by Department of Information and Public Relations on 7<sup>th</sup> August, 2019, which [were] providing facilities, like telephone, Internet connection, computer, printer, etc. to all media persons from 8 AM in the morning till 11 PM.” See, *Limited Affidavit on Behalf of Respondent No. 2 in Anuradha Bhasin v. Union of India*, Writ Petition (C) 1031 of 2019, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/02/AB-v.-Union-of-India-Full-Judgment.pdf>.

125 Rayan Naqash, *Panopticon of fear and rumours: Inside Kashmir’s media centre during lockdown*, NEWS LAUNDRY (Feb. 5, 2020), <https://www.newslaundry.com/2020/02/05/a-panopticon-of-fear-and-rumours-inside-kashmir-s-media-centre-during-lockdown>; Pamela Philipose, *Backstory: The Kashmir Model of Humiliating Journalists for Media Control*, THE WIRE (Feb. 8, 2020), <https://thewire.in/media/backstory-special-column-kashmir-media>; see also *supra* text accompanying note 110; see also *supra* text accompanying note 6 at 47; see also *supra* text accompanying note 81; see also *supra* text accompanying note 110.

126 Interview with a journalist in Srinagar, Jammu, and Kashmir, *supra* note 81; see also *supra* text accompanying note 67.

127 Interview with a journalist in Srinagar, Jammu, and Kashmir, *supra* note 67.

128 Interview with Fahad Shah, *supra* note 83.

129 Interview with a journalist in Srinagar, Jammu, and Kashmir, *supra* note 81.

130 Adil Akhzer, *J&K Govt restricts access to media facilitation centre in Srinagar; withdrawn later*, INDIAN EXPRESS (Sept. 16, 2019), <https://indianexpress.com/article/india/jk-govt-restricts-access-to-media-facilitation-centre-in-srinagar-kashmir-5999282/>; see also *supra* text accompanying note 123.

131 See, Aakash Hassan (@AakashHassan), TWITTER (Nov. 11, 2019, 1:57 AM), <https://twitter.com/AakashHassan/status/1193784799778889728>.

132 Interview with Mehroosh Shah, *supra* note 38.



regularly between Delhi and Srinagar carrying pen drives that contained the stories and photos of various journalists.<sup>133</sup>

For those with access, Outside Broadcasting (OB), working through satellite networks, was a gateway. Saleem, a Srinagar journalist, wrote stories on his laptop that the OB engineer recorded on his screen and then transmitted to Delhi, where someone typed out the text into a new piece. This inevitably meant that Saleem could not be a part of the editing process. His colleagues in Delhi had to fill in some gaps in research, and he felt “helpless” in not knowing whether the piece was published and how it read.<sup>134</sup> To add to this, the process was cumbersome. Even after he began going to the Media Facilitation Centre to send his stories, he could not immediately view the final edits and published pieces—“from August till March, I never received a playback of my story from the editorial desk because it was practically impossible for me to respond to it on time.”<sup>135</sup>

#### d. Whitelisting of Websites between January and March 2020

The situation described above continued until January 2020. Following the judgment of the Supreme Court in *Anuradha Bhasin* directing the government to review the total suspension of internet services, the government whitelisted certain websites and opened broadband facilities for specified institutions in Kashmir beginning on January 14, 2020.<sup>136</sup> Four days later, the government released a list of 153 websites that could be accessed over 2G internet in the Jammu region and in two districts of Kashmir.<sup>137</sup> This was extended to 301 websites over the entire territory, including the Kashmir Valley, on January 24.<sup>138</sup> Later, the whitelist was extended to 1,485 websites (on February 15),<sup>139</sup> and finally went up to 1,674 sites (on February 24) before 2G mobile internet was restored for everyone in Jammu and Kashmir, with fixed-line internet connectivity, i.e. broadband, made available for all with Mac-binding.<sup>140</sup>

During this entire period, access to social media websites and virtual private networks (VPNs) remained prohibited. Despite the prohibition, VPNs became increasingly popular, especially to

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133 *Kashmir journalists struggle to tell their stories amid clampdown*, *supra* note 115; *see also supra* text accompanying note 6 at 62; *see also supra* text accompanying note 6; *see also supra* text accompanying note 89.

134 Interview in Srinagar, Jammu, and Kashmir, India, *supra* note 67.

135 *Id.*

136 Home Department, Government of Jammu & Kashmir, *Temporary suspension of Telecom Services-directions reg* (Jan. 14, 2020), [http://jkhome.nic.in/pdf/03\(TSTS\)%202020.pdf](http://jkhome.nic.in/pdf/03(TSTS)%202020.pdf). The order specifically referenced the decision in *Anuradha Bhasin* and after “taking into account the ground situation and after considering the available alternate measures, in light of the reports of the authorized officers,” directed that internet service providers provide broadband facility with mac-binding “to all the Institutions dealing with essential services, Hospitals, Banks, etc. as also Government offices, and in order to facilitate tourism, to hotels and tour and travel establishments.” These institutions could only access whitelisted websites. The order also permitted limited 2G post-paid mobile internet services in five out of ten districts of Jammu region for accessing the whitelisted sites.

137 *Id.*

138 *Id.*

139 *Id.*

140 Home Department, Government of Jammu & Kashmir, *Temporary suspension of Telecom Services-directions reg* (Jan. 14, 2020), [http://jkhome.nic.in/pdf/03\(TSTS\)%202020.pdf](http://jkhome.nic.in/pdf/03(TSTS)%202020.pdf). Mac-binding means “that a device’s MAC (Media Access Control) address (a hardware identification number) and its IP address are bound together so that all requests from that IP address can be served only by the computer with the particular MAC address.” Thus, Mac-binding helps restrict Internet access to registered devices through single PC. *See*, Aditi Agrawal, *Were the Republic Day internet shutdowns in Delhi, Haryana necessary?* FORBES (Jan. 28, 2021), <https://www.forbesindia.com/article/special/were-the-republic-day-internet-shutdowns-in-delhi-haryana-necessary/65997/1>.

visit social media sites like Facebook or Twitter.<sup>141</sup> This reportedly led to increased police aggression and brutality against such VPN use in Jammu and Kashmir, including arrests allegedly for the use of a VPN, although such allegations have been denied by security forces.<sup>142</sup>

The initial list of 153 whitelisted websites did not contain any dedicated news websites,<sup>143</sup> thus continuing to restrict the fundamental rights of Kashmiris, guaranteed under Article 19(1)(a) of the Constitution, to receive information and news.<sup>144</sup> While certain news sites were included in the subsequent list of 301 sites, there is no discernible pattern as to which sites were included in the whitelist, or why some news sites were included and some continued to be blacklisted. More importantly, a preliminary empirical analysis of the 301 whitelisted websites found that only 126 were “usable to some degree,” and of these, 68 websites suffered from some important features being “adversely affected.”<sup>145</sup>

Even though broadband connections opened up for certain institutions in Kashmir, it was

reported that only 350–400 of the 23,000 state-owned broadband connections provided by BSNL were working.<sup>146</sup> More importantly, in order to receive a broadband connection, a company (such as a news media organization) had to provide a signed bond guaranteeing that the internet was restricted to business purposes only, undertaking, inter alia, that:<sup>147</sup>

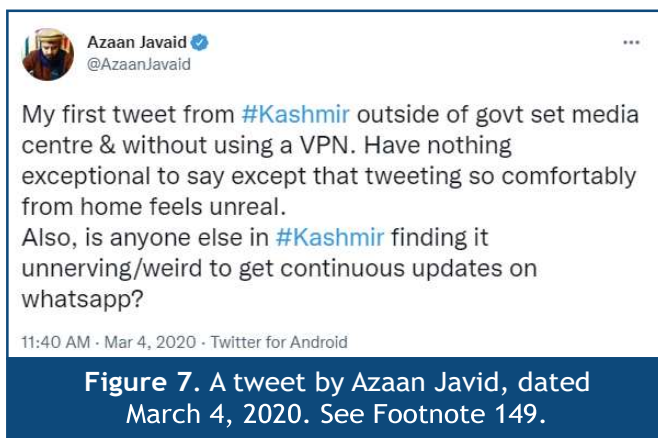
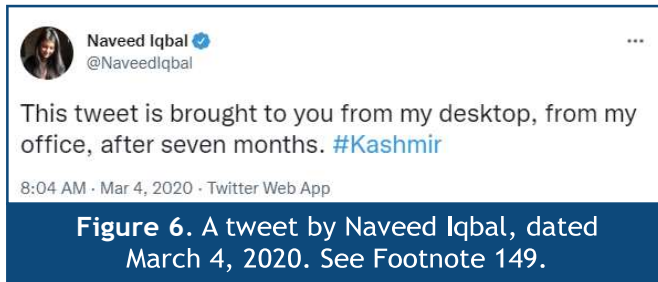
- a. No social networking sites, proxies, VPNs, or Wi-Fi would be permitted from their IP address;
- b. No encrypted files containing any photos or videos would be uploaded;
- c. All USB ports of the computer would be disabled; and
- d. The company would provide “complete access” to all its content and infrastructure as and when required by security agencies.

Despite the partial resumption of limited internet services, perhaps because of the challenges outlined above, journalists reportedly continued using the Media Facilitation Centre to access the internet.<sup>148</sup>

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- 141 Safwat Zargar, *Crackdown Against VPN Usage in Kashmir*, MEDIUM (Feb. 12, 2020), <https://www.medianama.com/2020/02/223-vpn-kashmir/>; Saqib Mugloo, *Kashmiris and VPNs: A love story in times of social media ban* (Mar. 10, 2020), <https://thekashmirwalla.com/2020/03/kashmiris-and-vpns-a-love-story-in-times-of-social-media-ban/>. Companies such as ‘LetsVPN,’ which was one of the preferred VPN browsers during the January to March 2020 period actively tweeted about their support for the people of Kashmir. See, LetsVPN (@LetsVpn), TWITTER (FEB. 18, 2020, 12:45 AM), <https://twitter.com/LetsVpn/status/1229642971319980032>.
  - 142 Safwat Zargar, *Crackdown Against VPN Usage in Kashmir*, MEDIUM (Feb. 12, 2020), <https://www.medianama.com/2020/02/223-vpn-kashmir/>; Safwat Zargar, *In Kashmir, a spree of arrests for alleged ‘misuse’ of social media and masking apps*, SCROLL.IN (Mar. 1, 2020, 9:00 AM), <https://scroll.in/article/954711/in-kashmir-a-spreed-of-arrests-for-alleged-misuse-of-social-media-and-vpns>; see also, Interview with a researcher from Kashmir (Jan. 2021) (name kept anonymous for security purpose).
  - 143 Home Department, Government of Jammu & Kashmir, *Temporary suspension of Telecom Services-directions reg* (Jan. 14, 2020), [http://jkhome.nic.in/pdf/03\(TSTS\)%202020.pdf](http://jkhome.nic.in/pdf/03(TSTS)%202020.pdf). See also, *No Mainstream News in List of 153 Whitelisted Websites Under Kashmir’s First Govt Firewall*, THE WIRE (Jan. 18, 2020), <https://thewire.in/government/kashmir-internet-whitelisted-websites>.
  - 144 Bennett Coleman & Co. v. Union of India, 2 S.C.R. 757 (1972) (India).
  - 145 Rohini Lakshané & Prateek Waghre, *Even the 301 Whitelisted Sites In Jammu And Kashmir Are Not Entirely Accessible: An Analysis*, MEDIUM (Jan. 28, 2020), <https://www.medianama.com/2020/01/223-analysis-of-whitelisted-urls-in-jammu-and-kashmir-how-usable-are-they/>; Rohini Lakshané & Prateek Waghre, *Analysis of whitelisted URLs in Jammu and Kashmir, order dated 18 January 2020*, ZENODO (Jan. 25, 2020), <https://zenodo.org/record/3627665#.YJ--d5MzbJ8>.
  - 146 Safwat Zargar, *The internet is painfully slow in Kashmir - but users have found a way to access restricted websites*, SCROLL.IN (Jan. 30, 2020, 9:00 AM), <https://scroll.in/article/951519/the-internet-is-painfully-slow-in-kashmir-but-users-have-found-a-way-to-access-restricted-websites>.
  - 147 A copy of the undertaking to be signed, as sent by one of the respondent-interviewees is on file. See also, Zulfikar Majid, *Strict rules for restoring internet in govt offices*, DECCAN HERALD (Nov. 19, 2019, 2:26 PM), <https://www.deccanherald.com/national/north-and-central/strict-rules-for-restoring-internet-in-govt-offices-777613.html>; Irfan Amin Malik, *In Kashmir, VPNs Allow Residents to Slip Past the Region’s Firewalls*, THE WIRE, (Feb. 8, 2020), <https://thewire.in/tech/kashmir-internet-vpn-firewall>. It is also relevant that different accounts have emerged of whether such undertakings are being asked by ISPs on their own accord, or on the instruction of the government; see also *supra* text accompanying note 146.
  - 148 Zargar, *supra* note 146.

#### e. Complete Restoration of 2G Mobile Internet Beginning March 2020: Covid-19 and the Challenges for HRDS

On March 4, 2020, internet services were finally restored, but mobile internet speeds were restricted to 2G only. Broadband internet connectivity was limited to a single device.<sup>149</sup>



With the outbreak of the Covid-19 pandemic and ensuing national lockdown, the continued restriction of mobile internet speeds to 2G was

challenged before the Supreme Court of India in *Foundation for Media Professionals v Govt. of UT of J&K and Anr* (“FMP”).<sup>150</sup> Disposing of the writ petitions, the Court constituted a three-member “Special Committee” consisting of the Home Secretary of the Government of India; the Secretary of the Department of Communications, Ministry of Communications, Government of India; and the Chief Secretary of the Union Territory of Jammu and Kashmir 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.” The Committee was also tasked with examining the appropriateness of less-restrictive alternatives, including “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.”<sup>151</sup> In August 2020, the government informed the Supreme Court that it had decided to restore 4G mobile internet access in two out of the twenty districts in Jammu and Kashmir on a “trial basis,”<sup>152</sup> although internet continued to be restricted to 2G in the remaining 18 districts until February 2021.

The restoration of the internet improved the lives of the people of Kashmir, but it continued to impact the functioning of HRDs, primarily because 2G internet speeds are very slow. Compared to 4G, the same task can take up to 50 times longer at observed 2G download speeds.<sup>153</sup> This greatly hampers HRDs’

149 *Temporary suspension of Telecom Services-directions reg, supra* note 136.

150 *Found. for Media Pro. v. Union Territory of Jammu and Kashmir & Anr.*, 5 SCC 746 (2020) (India). For more details and background, see *SC issues notice in FMP’s petition seeking restoration of 4G internet services in Jammu & Kashmir during COVID-19 crisis #KeepUsOnline*, INTERNET FREEDOM FOUNDATION, <https://internetfreedom.in/sc-issues-notice-in-fmps-petition-seeking-restoration-of-4g-internet-services-in-jammu-kashmir-during-covid-19-crisis/> (last visited July 23, 2021).

151 *Id.* at para. 24, 25.

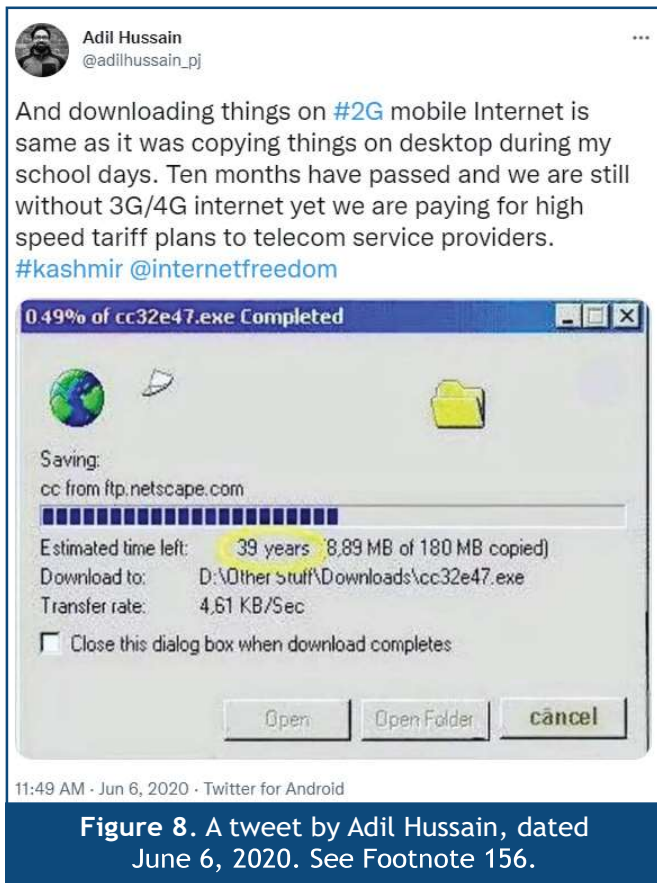
152 *See, Found. For Media Pro. v. Ajay Kumar Bhalla & Ors, Const. Pet. (C) No. 411/2020* (2020) (India) (referencing to the order passed by the Supreme Court of India in Writ Petition No. 10817/2020 on August 11, 2020) For a more detailed background about the case, see *Govt agrees to staggered restoration of 4G mobile internet in J&K before the Supreme Court #KeepUsOnline*, INTERNET FREEDOM FOUNDATION, <https://internetfreedom.in/staggered-4g-restoration-j-k/> (last visited July 23, 2301); see also *supra* text accompanying note 62 at 9.

153 Mr. Waghre submitted a technical expert affidavit before the Supreme Court in *Foundation for Media Professionals. v. Union Territory of Jammu and Kashmir & Anr.*, in order to explain the difference between the user experience at 2G and 4G speeds. Amongst the inferences drawn by him were that (a) “...at Observed 2G download speeds, the same task could take up to 50x longer than at Observed 4G download speed”; (b) Video-viewing experiences at 2G are subject to “significant degradation” compared to 4G speed, such that a 20 minute video may take up to 1 hour 36 minutes to watch completely; and (c) Users will face significant issues when using video conferencing apps, exacerbated by any multi-tasking on the windows. [I think we may be able to remove this para. The issues with 2G and 4G speeds may not need such extensive quoting and are pretty well explained above the line] *Found. for Media Pro. v. Union Territory of Jammu and Kashmir & Anr.*, W. P. (C) No. 10817, at 24-25 (2020) (India). [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-373172.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-373172.pdf).



ability to communicate with the people they support, report on stories, upload evidence of government actions, conduct research using large publication databases, or engage in international information-sharing that relies on large data exchanges.

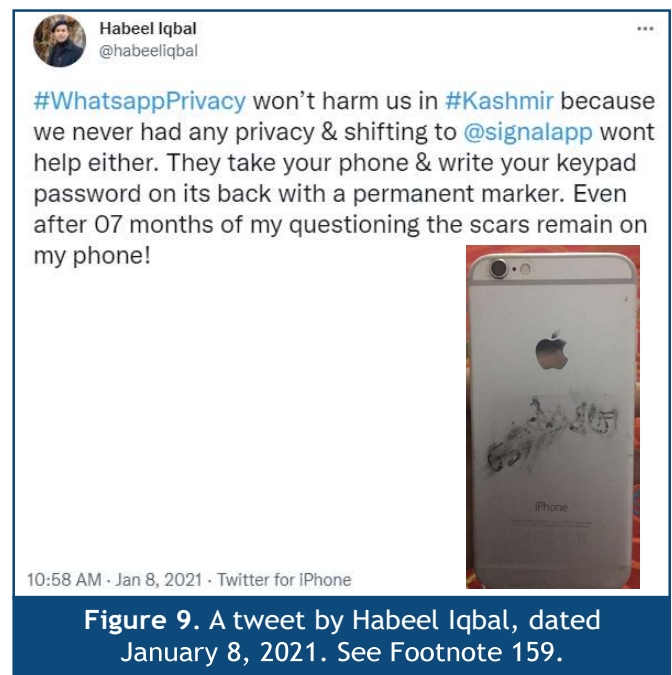
What this means in practical terms is that while it may have been easy to send messages or speak with people over the phone using encrypted apps such as Signal or WhatsApp, downloading or uploading files, photos, or videos at 2G mobile speed was very difficult.<sup>154</sup> Thus, it continued to be challenging to pitch, report, and send stories, especially for photojournalists.<sup>155</sup> This is perhaps best illustrated by the photo in this tweet:<sup>156</sup>



**Figure 8.** A tweet by Adil Hussain, dated June 6, 2020. See Footnote 156.

Shrimoyee Ghosh, one of the authors of an internet shutdown report by the Jammu Kashmir Coalition of Civil Society (JKCCS), spoke about the perils of communication security, the difficulties in remotely establishing trust and communication in an environment of surveillance paranoia, and the problems in getting information from people.<sup>157</sup> As Shrimoyee explained, phones are a “site of violence” in Jammu and Kashmir because they are regularly checked by the armed forces, and hence, “People don’t trust WhatsApp ..., they view their phone as a listening device for the state.”<sup>158</sup> For instance, Habeel Iqbal, a lawyer from Shopian, Kashmir tweeted the following photo with the text:<sup>159</sup>

“#WhatsappPrivacy won’t harm us in #Kashmir because we never had any privacy & shifting to @signalapp wont help either. They take your phone & write your keypad password on its back with a permanent marker. Even after 7 months of my questioning the scars remain on my phone![sic]”



**Figure 9.** A tweet by Habeel Iqbal, dated January 8, 2021. See Footnote 159.

154 Interview with Mehroosh Shah, Law student & Researcher from Jammu and Kashmir, currently in Delhi (Jan. 1, 2021) (unofficial translation); Interview with a journalist in Srinagar, Jammu, and Kashmir (Dec. 2019) (name kept anonymous for security purposes).  
 155 Zargar, *supra* note 146.  
 156 See Adil Hussain (@adilhussain\_pj), TWITTER (June 6, 2020, 11:49 AM), [https://twitter.com/adilhussain\\_pj/status/1269295402785869826](https://twitter.com/adilhussain_pj/status/1269295402785869826).  
 157 Interview with Shrimoyee Ghosh, Academic in Bengaluru, India, (Jan. 15, 2021).  
 158 Interview with Shrimoyee Ghosh, *supra* note 157.  
 159 See, Habeel Iqbal (@habeeliqbal), TWITTER (Jan. 8, 2021, 10:58 AM), <https://twitter.com/habeeliqbal/status/1347573323564109826>.

Even though the full broadband connection was restored, broadband access was only available to a certain class of people with means in Jammu and Kashmir. Data collected by the Telecom Regulatory Authority of India reveals that as of December 30, 2019, Jammu and Kashmir had over 10.3 million wireless subscribers (needed for mobile internet) compared to a wireline subscriber base (fixed-line internet connectivity) of only a little over 132,000.<sup>160</sup> Even then, it was not always easy to get a new broadband connection, despite the lack of legal restrictions. One of the journalists interviewed for this report said that despite living in the heart of the city in Srinagar and applying for a broadband connection, both with the state-owned BSNL and the private Jio-Fibre, he had not been successful.<sup>161</sup> A lawyer, whose family lived near the Handwara district in North Kashmir said that there was no service provider in their area and there was no possibility that his family would get a broadband or landline connection.<sup>162</sup> While many rural areas in India lack broadband access, there are landline and broadband services available in Kashmir; however, they are not provided to everyone and their high cost could be an impeding factor. Without access to high-speed data, HRDs, including journalists, are left without the ability to transmit their reports, photos, and videos that document human rights violations.

Restricted internet speeds continued until February 2021. After around 550 days, the internet was fully restored in Jammu and Kashmir.<sup>163</sup> Nevertheless, localized internet shutdown orders continue to be promulgated in Kashmir, citing a “likelihood of misuse of data services by anti-national elements ... to.... disturb the law and order situation.”<sup>164</sup> In 2021 alone it was reported that the Jammu and Kashmir government had ordered 93 localized internet shutdowns.<sup>165</sup>

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160 Telecom Regulatory Authority of India, *Press Note No. 17/2020*, at 14, 16 (Feb. 25, 2020), [https://traai.gov.in/sites/default/files/PR\\_No.17of2020\\_0.pdf](https://traai.gov.in/sites/default/files/PR_No.17of2020_0.pdf).

161 Interview with a journalist in Srinagar, Jammu, and Kashmir (Jan. 2021) (name kept anonymous for security reasons). The journalist mentioned that he had gone to the Bharat Sanchar Nigmal Limited (BSNL) office 15-16 times, but representatives there kept on providing vague answers when questioned why the connection was not available in the area. For instance, representatives stated that BSNL’s services and devices were not working or that they would take time to revert. Even an official at Jio Fiber said that the fiber lines had not been installed near the interviewee’s house.

162 Interview with a lawyer and activist (Jan. 2021) (unofficial translation) (name kept anonymous for security purpose).

163 Anuradha Bhasin, the Executive Editor of the Kashmir Times, tweeted on February 05, 2021, “I actually see some going out of their way to thank govt functionaries for 4G restoration. They’re not offering us charity. We should be asking for compensation for our deprivation and losses.” See, Anuradha Bhasin (@AnuradhaBhasin\_), TWITTER (Feb. 5, 2021, 9:38 AM), [https://twitter.com/AnuradhaBhasin\\_/status/1357700080531238914](https://twitter.com/AnuradhaBhasin_/status/1357700080531238914).

164 Government of Jammu and Kashmir Home Department, Home – 23(TSTS) of 2021 (issued on May 18, 2021) Other shutdowns were directed in Sopore, Baramulla District. See, Government of Jammu and Kashmir Home Department, Home – 21(TSTS) of 2021 (issued on May 5, 2021) See also, *Foundation for Media Professionals writes to J&K Govt seeking compliance with Anuradha Bhasin*, INTERNET FREEDOM FOUNDATION, <https://internetfreedom.in/foundation-for-media-professionals-writes-to-j-k-govt-seeking-compliance-with-anuradha-bhasin-2/> (last visited July 23, 2021).

165 Jammu and Kashmir 93 Internet Shutdown Orders Issued After SC order on Communications Restrictions, THE SCROLL, (Dec. 3, 2021), <https://scroll.in/latest/1011995/jammu-and-kashmir-93-internet-shutdown-orders-issued-after-sc-order-on-communication-restrictions>.



# ■ V. ANALYZING THE TREND OF INTERNET SHUTDOWNS DURING PROTESTS

uu Mehta, a prominent Indian political scientist, wrote in the context of the abrogation of Article 370 in Jammu and Kashmir that the government “thinks it is going to Indiani[z]e Kashmir. But, instead, what we will see is potentially the Kashmiri[z]ation of India.”<sup>166</sup> In other words, the kinds of digital repression Kashmiris have seen will now be experienced firsthand by the rest of India.

After Jammu and Kashmir, the longest internet shutdown in India took place in Darjeeling, West Bengal, when mobile and broadband internet networks were suspended for 100 days from June 18 to September 25, 2017 because of ongoing agitation for a separate Gorkhaland.<sup>167</sup> Internet shutdowns that are common in Jammu and Kashmir were

also experienced in many other parts of the country—in some, for the first time—during the December 2019 anti-CAA protests<sup>168</sup> and the January 2021 farmer protests.<sup>169</sup> This section of the report contextualizes internet shutdowns from a macro-level perspective of the entire country. This section examines the background and impact of shutdowns in parts of India other than Jammu and Kashmir during times of conflict or protest and includes a review of the unique outlier status of Rajasthan, which has imposed the most shutdowns after Jammu and Kashmir.

## a. The 100-Day Shutdown in Darjeeling in 2017

In response to political disturbances in Darjeeling, the government suspended broadband and mobile internet services

166 Pratap Bhanu Mehta, *The story of Indian democracy written in blood and betrayal*, THE INDIAN EXPRESS (Aug. 6, 2019), <https://indianexpress.com/article/opinion/columns/jammu-kashmir-article-370-scrapped-special-status-amit-shah-narendra-modi-bjp-5880797/>.

167 Manish Adhikary, *How Media beat the Shutdown in Darjeeling*, THE CENTRE FOR INTERNET & SOCIETY (Dec. 19, 2017), <https://cis-india.org/internet-governance/blog/how-media-beat-the-shutdown-in-darjeeling>. See also, *India's Shutdown Numbers*, INTERNETSHUTDOWNS.IN, <https://internetshutdowns.in/> (last visited July 23, 2021).

168 In December 2019, the Indian government passed the Citizenship (Amendment) Act, 2019. The passage of the CAA and the all-India National Register of Citizens (NRC) was met with widespread protests throughout the country. There were multiple clashes between the police and the protestors, resulting in the death of many protestors, injuries to policemen, and destruction of public property. See, Helen Regan, *Three dead in widespread protests across India despite bans on public gathering*, CNN (Dec. 20, 2019), <https://edition.cnn.com/2019/12/19/asia/india-nationwide-citizenship-protests-intl-hnk/index.html>; *Citizenship Act protests: Why fear has gripped Muslims in this Indian state*, BBC (Dec. 31, 2019), <https://www.bbc.com/news/world-asia-india-50946271>.

169 Tens of thousands of farmers began protesting around the border regions of New Delhi to demand the repeal of three farm laws passed by the government. The farmers had been protesting peacefully for months. However, after violence erupted across parts of Delhi and its borders on January 26, 2021, the government suspended internet services in three areas around Delhi. See, *India protests: Internet cut to hunger-striking farmers in Delhi*, BBC (Jan. 30, 2021), <https://www.bbc.com/news/world-asia-india-55872480>; Esha Mitra & Julia Hollingsworth, *India cuts internet around New Delhi as protesting farmers clash with police*, CNN (Feb. 3, 2021, 7:20 AM), <https://www.cnn.com/2021/02/01/asia/india-internet-cut-farmers-intl-hnk/index.html>.

in the state in 2017 for 100 days. This was accompanied by the shutdown of cable TV services, an indefinite ‘bandh’ (strike), and severe restrictions on movement.<sup>170</sup> The city was pushed into a “state of virtual darkness.”<sup>171</sup>

The shutdown impeded communication and made media reporting very difficult. Rakesh, a journalist from Siliguri, said it was “very difficult” to type 600-word stories on his phone to send via SMS. Along with his fellow journalists, he finally went to a specific hill in Darjeeling, dubbed “Jio Hill”<sup>172</sup>—from where they could catch the Reliance Jio network from the neighboring state of Sikkim. Rakesh’s routine during that time was to attend press conferences, write stories, and go to Jio Hill to catch a strong enough network signal to send out his stories.<sup>173</sup>

## b. Internet Shutdowns During the Anti-Caa Protests in 2019

The tabling of the Citizenship (Amendment) Act, 2019 (CAA) before Parliament and its enactment in 2019 led to protests throughout the country, which on some occasions turned violent, damaged public property, and resulted in the deaths of protesters.<sup>174</sup> In response, state governments across the country barred public assemblies and imposed restrictions on movement under Section 144, CrPC. Additionally, the internet was reportedly suspended by ten governments across the country: in the north (Delhi and Uttar Pradesh), northeast (Assam, Arunachal Pradesh, Meghalaya, Tripura), east (West Bengal), south (Karnataka), central (Madhya Pradesh), and west (Rajasthan).<sup>175</sup> The orders varied in terms of whether the internet was suspended in the entire state or only in a few districts of the state. Amongst these, the internet was shut down for the first time in the capital, Delhi,<sup>176</sup> and in Karnataka (in the city of

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170 *GJM ends 104-day strike: All about Darjeeling crisis, Gorkhaland demand*, HINDUSTAN TIMES (Sept. 27, 2017), <https://www.hindustantimes.com/india-news/gjm-ends-104-day-strike-all-about-darjeeling-crisis-gorkhaland-demand/story-cYX1IHkt2QyHURqeD1GowK.html>; *Darjeeling: Govt shuts down cable TV service*, THE INDIAN EXPRESS (Aug. 10, 2013), <https://indianexpress.com/article/news-archive/web/darjeeling-govt-shuts-down-cable-tv-service/>.

171 *No More Shutdowns*, *supra* note 63.

172 Adhikary, *supra* note 167.

173 Interview with Rakesh, Siliguri Journalist (Jan. 24, 2021) (name changed for security purposes).

174 *These Are the 25 People Killed During the Anti-Citizenship Amendment Act Protests*, THE WIRE (Dec. 23, 2019), <https://thewire.in/rights/anti-caa-protest-deaths>; Hemanta Kumar Nath, *Anti-CAA protests: 393 people arrested, 244 cases registered in Assam violence*, INDIA TODAY (Dec. 23, 2019, 11:08 PM), <https://www.indiatoday.in/india/story/anti-caa-protests-393-people-arrested-244-cases-registered-in-assam-violence-1631001-2019-12-23>; *Shops vandalized, cars torched; curfew imposed in Shillong*, NORTHEAST NOW (Dec. 12, 2019), [HTTPS://NENOW.IN/NORTH-EAST-NEWS/MEGHALAYA/SHOPS-VANDALIZED-CARS-TORCHED-CURFEW-IMPOSED-IN-SHILLONG.HTML](https://nenow.in/north-east-news/meghalaya/shops-vandalized-cars-torched-curfew-imposed-in-shillong.html).

175 Joanna Slater & Niha Masih, *India muzzles citizenship law protests, detaining thousands and shutting down Internet in several cities*, THE WASHINGTON POST (Dec. 19, 2019), [https://www.washingtonpost.com/world/asia\\_pacific/india-muzzles-citizenship-law-protests-shutting-down-internet-and-detaining-protesters/2019/12/19/d5bc4ea6-21a7-11ea-b034-de7dc2b5199b\\_story.html](https://www.washingtonpost.com/world/asia_pacific/india-muzzles-citizenship-law-protests-shutting-down-internet-and-detaining-protesters/2019/12/19/d5bc4ea6-21a7-11ea-b034-de7dc2b5199b_story.html); Trisha Jalan, *Indian Govt Uses Internet Shutdowns To Curb Anti-CAA Protests — In UP, Delhi, Assam, and 6 Other States*, MEDIANAMA (Jan. 2, 2020), <https://www.medianama.com/2020/01/223-indian-govt-internet-shutdowns-citizenship-protests/>.

176 The internet shutdown order for Delhi was posted on Twitter by ANI (Asian News International). ANI (@ANI), TWITTER (Dec. 19, 2019, 2:44 AM), <https://twitter.com/ANI/status/1207567358002266118>. The order, marked “Top Secret/Confidential,” states that “in view of the prevailing law and order situation, it is hereby directed that communication of all types, i.e. voice, SMS, & internet, be halted from 09:00 hours to 13:00 hours, in the Cell IDs/BTS covering the following areas for dated 19.12.2019.” The shutdown order was later challenged before the Delhi High Court by SFLC.in in WP (C) No. 13853/2019 on grounds that the order was impermissibly labelled “Top Secret/Confidential;” when it should have been disclosed to certain parties according to the Telecom Suspension Rules and for citing “law and order” as a justification, even though the Telecom Suspension Rules require the situation to rise to a level of “public safety or emergency.” The challenge was ultimately dismissed by the Delhi High Court. *See, Our statement on the Delhi High Court’s dismissal of the PIL challenging internet shutdown in Delhi*, SFLC (Mar. 1, 2020), <https://sflc.in/our-statement-delhi-high-courts-dismissal-public-interest-litigation-challenging-internet-shutdown>; Karan Tripathi, *Delhi HC Dismisses Plea Challenging Internet Shutdown in Delhi Over CAA Protests*, LIVE LAW (Dec. 24, 2019, 2:24 AM), <https://www.livelaw.in/news-updates/delhi-hc-dismisses-plea-challenging-internet-shutdown-in-delhi-over-caa-protests-151063>.

Mangaluru),<sup>177</sup> and questions were raised about legal infirmities affecting the order passed in both these places.

### i. Mangaluru, Karnataka

Prajwal Bhat, a journalist, was reporting from the ground in Mangaluru during the shutdown and protests, where two people were killed when the police fired shots after the protests allegedly turned violent.<sup>178</sup> There had been no advance notice of the shutdown and no expectation that any such order would be passed, and since it was the first time that the internet had been suspended in any part of the state, it caused “genuine shock.”<sup>179</sup> As journalists, Bhat said, “we had no prior experience” of dealing with an internet shutdown, and “we didn’t really understand what would happen.”<sup>180</sup> According to Bhat, the combined effect of the internet shutdown and the movement restrictions put in place pursuant to the ongoing imposition of Section 144, CrPC in the region impacted the right to access information. He stated that “most people had not seen the videos [of alleged excessive use of force by police]. In the critical period in the first couple of days of violence,

there was massive confusion and people were unable to understand what was happening on the outside.”<sup>181</sup>

### ii. Uttar Pradesh

In response to the anti-CAA protests in Uttar Pradesh (UP), India’s largest state, the internet was suspended by the government in multiple districts across the state, including its capital city of Lucknow, for six days, to check the spread of rumors and the incitement of violence through social media that may have exacerbated the law and order problem.<sup>182</sup>

Rajeev Yadav, a political activist and the general secretary of the organization Rihai Manch, said that internet shutdowns in UP should be viewed in the context of the state’s repressive policies, which often disproportionately target the state’s sizeable Muslim population.<sup>183</sup> According to Yadav, internet shutdowns are ordered by the state when protests are “against State ideology,” partly because the internet had democratized access to information and exposed people to the realities of state oppression. By shutting down the internet, Yadav said, the state was

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177 The internet shutdown order was posted by the journalist Prajwal Bhat on Twitter. Prajwal Bhat (@prajwalmanipal), TWITTER (Dec. 19, 2019, 12:12 PM), <https://twitter.com/prajwalmanipal/status/1207710360507166720>. Mobile internet was shut down for 48 hours on Dec. 19, 2019 in the Mangalore City Police Commissionerate and the Dakshin Kannada District, stating that “incidents involving violation of Section 144 of Cr.PC have been reported in different parts of Mangaluru City and there are probabilities of more such incidents, which may adversely affect the Law & Order situation and threaten public safety.” The order further stated that the internet was being suspended “to prevent the misuse of the social media platforms to disturb the peace and tranquility and for maintaining the law and order situation.” As with the Delhi order, this order was also using a “law and order” justification, which is impermissible under the Telecom Suspension Rules. According to Prajwal, the order is also problematic because it seems to rely completely on the police’s narrative and ignores the fact that two people died because of alleged police excess. Interview with Prajwal Bhat, a journalist with the News Minute based in Bengaluru, Karnataka (Feb. 07, 2021).

178 Theja Ram, *Mobile internet services suspended in Mangaluru city and Dakshina Kannada for 48 hours*, THE NEWS MINUTE (Dec. 19, 2019, 11:06 PM), <https://www.thenewsminute.com/article/mobile-internet-services-suspended-mangaluru-city-and-dakshina-kannada-48-hours-114410>; All India People’s Forum *et al.*, *Police Excesses In Mangaluru On December 19, 2019: A Fact Finding Report* (Jan. 2020), <https://www.nchro.org/wp-content/uploads/2020/02/Police-Excesses-in-Mangaluru-on-December-19-2019-Fact-Finding-Report.pdf>.

179 Rajashekara S, Karnataka: BS Yediyurappa government bans internet in coastal Dakshina Kannada after violence kills two in Mangaluru, BANGALORE MIRROR, (Dec 20, 2019), <https://bangaloremirror.indiatimes.com/bangalore/others/karnataka-bs-yediyurappa-government-bans-internet-in-coastal-dakshina-kannada-after-violence-kills-two-in-mangaluru/articleshow/72897924.cms>

180 Interview with Prajwal Bhat, *supra* note 177.

181 *Id.*

182 *Internet Restored in Lucknow After Shutdown For Six Days over Violence During anti-CAA Protests*, NEWS 18 (Dec. 25, 2019, 8:16 PM), <https://www.news18.com/news/india/internet-restored-in-lucknow-after-shutdown-for-6-days-over-violence-during-anti-cao-protests-2435995.html>; *Amid Nationwide Anti-CAA Stir, Internet Suspended for 45 Hrs in Major Cities of UP; Services Hit in Bengal*, NEWS 18 (Dec. 20, 2019, 5:29 PM), <https://www.news18.com/news/india/amid-nationwide-anti-cao-stir-internet-suspended-for-45-hrs-in-major-cities-of-up-services-hit-in-bengal-2431175.html>.

183 Twesh Mishra, *Disconnected in UP as Mobile Internet remains Shut*, THE HINDU, (Dec. 25, 2019), <https://www.thehindubusinessline.com/news/disconnected-in-up-as-mobile-internet-remains-shut/article30396508.ece>.



Anti CAA NRC protestors in New Delhi.

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effectively stopping people from expressing their reality, which is tied to their protected right to exercise free speech and expression.<sup>184</sup>

### iii. Assam and Meghalaya

In both Assam and Meghalaya, the internet was suspended for over a week in December 2019.<sup>185</sup> In Assam, despite the internet shutdown and in defiance of the curfew, people gathered in huge numbers for the protests of December 12, 2019 in the capital city of Guwahati.<sup>186</sup> Angaj Gautam, an Assamese lawyer, did not believe that the shutdown reduced people's participation in the protests in any way. To the contrary, he believed that resentment against the internet shutdown "actually gave more impetus to the anti-CAA sentiment and increased the involvement of the youth," who saw the shutdown as the state's "way of rubbing salt in their wound (of anti-CAA grievances)." Internet was finally restored in Assam on December 19, based on a ruling of the Gauhati High Court.<sup>187</sup> Significantly, in the petitioners' submissions to the court, they laid out the impact of the internet shutdown on lawyers and judges alike:

"Electricity supply has been snapped [turned off] at the houses of lawyers because pre-paid meters have been installed which can only be charged through the internet. It has been impressed on the court that the

functioning of the court has been seriously interfered with in so much as the cause list cannot be accessed without provision of internet/mobile data services."<sup>188</sup>

The petitioners demonstrated that the entire legal community is impacted by internet shutdowns and is left unable to properly operate. The Court agreed with the petitioners and explained that while there are instances when shutdowns may be permitted under the Telegraph Act, the current shutdown should end because the government was unable to provide evidence that it was necessary to preserve "law and order."<sup>189</sup> The Court concluded that since the physical lockdown of the area had been lifted by the government, unless it could provide proof to the court that there were threats to law and order, the internet shutdown must also be lifted.<sup>190</sup>

### iv. Unintentional Impact

Given the pan-national nature of the anti-CAA protests, the internet shutdowns in December 2019 are probably the only time that simultaneous shutdowns have been ordered across different Indian states. This prompted a national conversation on pushing back against shutdowns, ranging from how to tweet during a shutdown<sup>191</sup> to the apps (such as Bridgefy and FireChat) that should be downloaded to

184 Interview with Rajeev Yadav, *supra* note 9.

185 In Assam, the internet was initially suspended in some district on Dec. 11, 2019, and was subsequently extended to the rest of the state till the High Court directed its restoration on Dec. 11, 2019. *See*, Banashree Gogoi v. Union of India, PIL 78/2019 (2019) (India) (available at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-368244.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-368244.pdf)). In Meghalaya, internet and SMS services were shut from Dec. 12, 2019 till Dec. 20, 2019. *See*, *Anti-CAB protests: Mobile Internet, SMS suspended in Meghalaya*, REDIFF (DEC. 13, 2019), <https://www.rediff.com/news/report/mobile-internet-sms-suspended-in-meghalaya/20191213.htm>; *Mobile internet services restored in Meghalaya*, NORTHEAST NOW (DEC. 20, 2019), <https://nenow.in/north-east-news/meghalaya/mobile-internet-service-restored-in-meghalaya.html>.

186 *Anti-CAB stir: People defy curfew, police open fire as Assam*, ECONOMIC TIMES (DEC. 12, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/anti-cab-protests-in-assam-police-opens-fire-on-protestors/articleshow/72487251.cms>. One of the persons interviewed said that he and his family attended the protests at the Latasil field, Guwahati, in defiance of the curfew. Interview with anonymous person in Guwahati, Assam (Dec. 2019) (name and designation kept anonymous for security purpose).

187 Interview with Angaj Gautam, Lawyer in Guwahati, Assam (Dec. 25, 2020). *see also supra* text accompanying note 185.

188 Banashree Gogoi v. Union of India, *supra* note 185, at 5.

189 *Id.* at 7.

190 *Id.* at 8.

191 *How to tweet during an internet shutdown*, GADGETS NOW (DEC. 22, 2019, 2:06 AM IST), <https://www.gadgetsnow.com/how-to/how-to-tweet-during-an-internet-shutdown/articleshow/72888445.cms>.



enable communication during a shutdown.<sup>192</sup> Incidentally, Bridgefy had become popular during the anti-government protests in Hong Kong.<sup>193</sup>

### c. Internet Shutdowns During the Farmer Protests in 2021

Since November 2020, thousands of farmers had been protesting in and around Delhi (in Punjab and Haryana), seeking a repeal of farm laws passed by the government. The protests had largely been peaceful, until violent clashes broke out on January 26, 2021.<sup>194</sup> Citing public safety concerns, the government ordered a complete internet shutdown from 12:00 pm until midnight on January 26 in Singhu, Ghazipur, Tikri, Mukarba Chowk, Nangloi, and adjoining areas in and around Delhi, with a temporary restriction of all mobile internet services to 2G in the Delhi circle.<sup>195</sup> The shutdown was extended beyond February 4 in some of these areas, including Haryana.<sup>196</sup>

In response to these shutdowns, the US State Department called for a dialogue between the government of India and the farmers, recognizing that “unhindered access to information, including the internet, is fundamental to the freedom of expression and a hallmark of a thriving democracy.”<sup>197</sup>

Unlike the spontaneous anti-CAA protests, the farmers’ protests were more organized and went on for much longer. The internet played a significant role in organizing and messaging around the protests. Arpan, a women’s activist involved in the protests, explained that social media, particularly through multiple Facebook and WhatsApp groups, allowed the farmers to have their own channel of communication with their supporters back home in Punjab and Haryana, and abroad.<sup>198</sup> It provided them a voice that was not offered by mainstream media and was partly responsible for the huge groundswell of support for the protests.<sup>199</sup> *Trolley Times*, a biweekly, trilingual (English, Hindi, and Gurumukhi) newspaper that was circulated physically and available through WhatsApp and online, is another example of the importance of

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192 *Here’s how you can tweet from your phone without internet*, HINDUSTAN TIMES (Dec. 31, 2019, 12:46 PM), <https://tech.hindustantimes.com/tech/news/here-s-how-you-can-tweet-from-your-phone-without-internet-story-iQTxGTNhzHWYdEzLipoG3L.html>; *With Internet Shutdowns Rising, Use These Apps To Chat Offline*, THE QUINT (Dec. 19, 2019, 2:59 PM), <https://www.thequint.com/tech-and-auto/tech-news/apps-android-ios-use-offline-when-internet-shutdown#read-more>.

193 John Koetsier, *Hong Kong Protesters Using Mesh Messaging App China Can’t Block: Usage Up 3685%*, FORBES (Sept. 2, 2019, 1:23 PM), <https://www.forbes.com/sites/johnkoetsier/2019/09/02/hong-kong-protesters-using-mesh-messaging-app-china-cant-block-usage-up-3685/amp/>; *Internet shutdown in Delhi: Bridgefy is a messaging app doesn’t need Internet*, INDIAN EXPRESS (Dec. 20, 2019, 9:30 AM), <https://indianexpress.com/article/technology/social/caa-protests-internet-shutdown-in-delhi-bridgefy-is-an-app-that-doesnt-need-internet-6174612/>.

194 Some farmers diverted from the agreed-upon route for taking out a large tractor rally, and thousands of protestors stormed the historic Red Fort building, with the police responding with tear gas and batons. As a result of the clashes, there were injuries to people and damage to property. See, *India protest: Farmers breach Delhi’s Red Fort in huge tractor rally*, BBC (Jan. 26, 2021), <https://www.bbc.com/news/uk-55793731>; see also *supra* text accompanying note 169.

195 Ministry of Home Affairs, Order of temporary suspension of Telecom Services, No. 22016/12/2019-CIS-IV (issued Jan. 26, 2021) (India).

196 Mitra and Hollingsworth, *supra* note 169.

197 US urges India to hold ‘dialogue’ with protesting farmers, AL JAZEERA (Feb. 4, 2021), <https://www.aljazeera.com/news/2021/2/4/us-urges-india-to-hold-dialogue-with-protesting-farmers>; Geeta Mohan, *US urges dialogue with farmers, access to internet, welcomes agricultural reforms*, INDIA TODAY (Feb. 4, 2021), <https://www.indiatoday.in/india/story/farmers-protest-us-dialogue-farmers-access-internet-agricultural-reforms-1765731-2021-02-04>.

198 Venkat Ananth, *Tractor to Twitter: How farmers Developed their Social Media Plan to Convey their Views*, THE ECONOMIC TIMES, (Jan. 3, 2021), <https://economictimes.indiatimes.com/news/politics-and-nation/tractor-to-twitter-how-farmers-developed-their-social-media-plan-to-convey-their-views/articleshow/80075943.cms?from=mdr>.

199 Interview with Arpan, Women’s Activist associated with Bekhauf Azadi from Chandigarh (Jan. 31, 2021) (unofficial translation).

the internet.<sup>200</sup> *Trolley Times* became a digital means for the farmers to accurately publicize their actions and demands so that they could confront misinformation being spread about them by other media sources. The internet also allowed the leaders of the protest to talk regularly with the protesting farmers through regular updates on WhatsApp groups since the farmers were often protesting over 10-12 km of highway. Given that not all of the farmers regularly read newspapers, the internet was often the protesting farmers' main source of information.<sup>201</sup> A robust social media presence was essential to generating news at the national level. The coverage of these protests in mainstream media was absent and inadequate, but "social media leads to news coverage. . . if a movement is not strong on social media, it will not be featured in the mainstream media."<sup>202</sup>

#### d. Shutdowns in Rajasthan

Other than Jammu and Kashmir, Rajasthan has experienced the greatest number of internet shutdowns since 2015, with 73 shutdowns in that period. The justifications for these shutdowns have ranged from stopping students from cheating on competitive exams to preventing the spread of false news that could incite violence.<sup>203</sup>

However, one HRD explained that internet shutdowns had become the preferred first option of the local administration in Rajasthan, especially to stop protests and muzzle the voice of the people. During the farmers' protests, mobile, WiFi, and broadband internet was suspended preventively in Sikhar, Rajasthan

for one day on September 11, 2017, when the farmers were expected to march to the district collector's office and block the highway.<sup>204</sup> Rajpal Sekhawat, an activist involved in these protests, claimed that even the one-day shutdown was unjustified because Sikar did not have any history of violence or communal tension, and the protests had been completely peaceful throughout the previous fortnight. Citing law and order justifications for preventively shutting down the internet in advance of a protest was, according to Sekhawat, like "closing the roads because accidents may happen."<sup>205</sup>

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200 Sanjay K. Jha, *How Trolley Times, voice of the farmers movement, came into being*, TELEGRAPH INDIA (Jan. 25, 2021, 1:19 AM), <https://www.telegraphindia.com/india/farmers-protest-how-trolley-times-the-voice-of-the-movement-came-into-being/cid/1804674>; Mausami Singh, *Trolley Times, I-T cell: Farmers swarm digital space*, INDIA TODAY (Dec. 20, 2020), <https://www.indiatoday.in/india/story/trolley-times-it-cell-farmers-swarm-digital-space-1751150-2020-12-19>.

201 Interview with Anjali Sheoran, Lawyer and Activist in Chandigarh (Jan. 28, 2021) (unofficial translation). She mentioned how her organization also used its Facebook page to speak about the protests and educate people about the issues. See generally, Student for Society (@studentforsociety) FACEBOOK, <https://www.facebook.com/studentsforsociety> (last visited July 26, 2021).

202 Interview with Rajpal Sekhawat, Activist in Sikar involved in the 2017 farmers movement and Supporter of the political party CPIM (Dec. 19, 2020) (unofficial translation).

203 Shrutanjaya Bhardwaj et al., *Rising Internet Shutdowns in India: A Legal Analysis*, 16(1) INDIAN J. OF L. AND TECH. (2021); Nakul Nayak, *The Legal Disconnect: An Analysis of India's Internet Shutdown Laws*, at 52 (IFF, Working Paper No. 1, 2018). Srikanta Tripathy, *Rajasthan sees 3<sup>rd</sup> mobile internet shutdown in 3 weeks over exam*, TIMES OF INDIA (Aug. 6, 2018), <https://timesofindia.indiatimes.com/india/rajasthan-sees-3rd-mobile-internet-shutdown-in-3-wks-over-exam/articleshow/65285357.cms>.

204 CIS, *supra* note 5 at 73, at 76.

205 Interview with Rajpal Sekhawat, *supra* note 202.

# VI. IMPACT OF INTERNET SHUTDOWNS ON VARIOUS HRDS

## a. Impact on Journalism and the Coverage of Protests

There is a growing perception amongst some activists that the government is using internet shutdowns as a tool to control the media narrative, suppress the local narrative, create propaganda, and shape public messaging.<sup>206</sup> Arpan, who was associated with the farmers protest, said that after the violence of January 26, 2021 and the internet shutdown, her organization felt hamstrung in countering the government narrative by offering their version of the events to their supporters and the public, which was particularly necessary in the aftermath of the disinformation campaign

against the farmers on social media and on television.<sup>207 208</sup>

Access to the internet is one of their essential tools in combating the government's narrative. Thus, an internet shutdown can hamper the reach of the on-the-ground narrative and cause underreporting of local issues,<sup>209</sup> a fact echoed by JKCCS in its Kashmir shutdown report.<sup>210</sup> Journalists incur an opportunity cost when they are forced to spend significant time trying to file their stories and, combined with the surrounding chaos of a protest/conflict zone, some stories may be missed.<sup>211</sup>

206 Interview with a journalist in Srinagar, Jammu, and Kashmir (Jan. 15, 2021) (unofficial translation) (name kept anonymous for security purposes); Interview with Dr. Samujjal Bhattacharjya, Advisor for the North-East Student Organisation (Jan. 10, 2021); Interview with Rajeev Yadav, General Secretary, Rihai Manch in Azamgarh, Uttar Pradesh (Jan. 2, 2021) (unofficial translation). See also, Ravi Krishnani, *India: The world leader in internet shutdowns*, CNN (Dec. 14, 2019, 4:15 PM), <https://edition.cnn.com/2019/12/14/opinions/india-world-leader-in-internet-shutdowns/index.html>; Raksha Kumar, *India's Media Can't Speak Truth to Power*, FOREIGN POLICY (Aug. 2, 2019, 1:54 PM), <https://foreignpolicy.com/2019/08/02/indias-media-cant-speak-truth-to-power-modi-bjp-journalism/>.

207 Interview with Arpan, Women's activist associated with Bekhauf Azadi from Chandigarh (Jan. 31, 2021) (unofficial translation). Arpan said that they wanted to highlight how there was no anti-national feeling at the protest, and that the Indian flag had not been taken down at the Red Fort. She said that there were many photos of farmers proudly flying the Indian flag, but those photos did not gain as much traction. See also, Interview with Anjali Sheoran, Lawyer and Activist in Chandigarh (Jan. 28, 2021) (unofficial translation).

208 Subir Sinha, *India farmers' protests: internet shutdown highlights Modi's record of stifling digital dissent*, THE CONVERSATION (FEB. 1, 2021, 7:52 AM), <https://theconversation.com/india-farmers-protests-internet-shutdown-highlights-modis-record-of-stifling-digital-dissent-154287>; *Joint statement against internet shutdowns to suppress farmers' protests #KeepItOn*, INTERNET FREEDOM FOUNDATION (Feb. 1, 2021), <https://internetfreedom.in/joint-statement-internet-shutdown-farmers-protests/>.

209 Interview with Mantre Passah, Teacher, Political Activist & Trade Unionist in Shillong, Meghalaya (Dec. 24, 2020).

210 *Kashmir's Internet Siege*, *supra* note 6 at 47.

211 Interview with Prajwal Bhat, Journalist with the News Minute based in Bengaluru, Karnataka (Feb. 7, 2021); Interview with Saurabh Sharma, Network Editor with 101 reporters & Independent Journalist in Lucknow, Uttar Pradesh (Jan. 11, 2021).

Internet shutdowns also make it harder for journalists to do the job of fact-checking and reporting: Saurabh Sharma said that without the internet, he could not ask his sources to send photographic/video evidence of the facts to which they testify.<sup>212</sup> The problem is exacerbated if there is a curfew in the region because it becomes more difficult for facts to emerge from other parts of the state.<sup>213</sup>

Even if a journalist is able to collect enough information to properly report on a story during an internet shutdown, transmission of the story to the editors becomes incredibly difficult. This was a common experience shared by many of the journalists interviewed; on many occasions, they were forced to type out their reports using multiple SMSs.<sup>214</sup> Another common experience involved journalists going multiple times on the same day to another district where the internet had not been suspended<sup>215</sup> or trying to access a bordering state's network (as with "Jio Hill" in Darjeeling). Without internet, freelance and citizen journalists who rely on posting live and verified updates on their social media, are also negatively affected.<sup>216</sup> Describing his experience while reporting during an internet shutdown in Kasganj, UP, the journalist Saurabh Sharma said:

"To send their news report to their bureau, journalists in the trouble-torn town were frantically searching for households with broadband connection, since the internet ban was applicable only on cellular networks and not on broadband. Kasganj

being a small town with its population barely exceeding a lakh, finding a broadband connection proved tough.

This reporter himself had to cross the district border a few times to get access to internet so that he could send inputs to his newsroom. Since vehicles were not plying owing to violence, finding a ride was a task in itself. This reporter had to request police, anti-riot forces and a local leader to help with travel for the sake of work."<sup>217</sup>

Thus, sometimes journalists must learn to "accommodate the inconveniences" of an internet shutdown, and "work around it," just as protesters and activists must.<sup>218</sup>

## **b. Impact on Ongoing Protests and Protesters**

### **i. Coordination and Mobilization Among Protest-Organizers**

Internet shutdowns are ordered by the government to stymie the flow of information about the protests to other districts.<sup>219</sup> Nevertheless, internet shutdowns affect activists and protesters differently, depending on whether they are organizing or attending the protests. Communication amongst a smaller core group of organizers is still possible, though cumbersome, involving multiple phone calls or SMSs. However, communication with a larger interested group may prove to be more difficult without the wide-ranging broadcasting abilities

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212 Interview with Saurabh Sharma, *supra* note 210.

213 Interview with Dr. Samujjal Bhattacharjya, Advisor for the North-East Student Organisation (Jan. 10, 2021). Interview with a school student and climate activist in Shillong, Meghalaya (Dec. 31, 2020) (name kept anonymous for security purposes).

214 Interview with a journalist in Siliguri, West Bengal (Jan. 24, 2021) (name kept anonymous for security purposes). *See also*, Interview with Saurabh Sharma, Network Editor with 101 reporters & Independent Journalist in Lucknow, Uttar Pradesh (Jan. 11, 2021) (interviewee said that he found it difficult to get information about the extent of the police crackdown in other cities while he was in Lucknow covering the anti-CAA protest).

215 Interview with Saurabh Sharma, Network Editor & Independent Journalist in Lucknow, Uttar Pradesh (Jan. 11, 2021). Sharma mentioned that while covering the anti-CAA protests in Lucknow in December 2019, he had to go to either Barabanki district (30 km) or Rae Bareilly (45 km away) away to file his stories. Interview with a journalist covering the farmer protests in Delhi (Mar. 18, 2021) (name kept anonymous for security purposes). Interviewee said that he made four trips to Bababanki.

216 Agrawal, *supra* note 140.

217 CIS, *supra* note 5 at 203-04.

218 Interview with a journalist covering the farmer protests in Delhi, *supra* note 214.

219 Interview with Tarique Shafique, Human Rights and Social Activist in Azamgarh, UP, India (Jan. 4, 2021). Interviewee said that, in his opinion, the UP government was trying to stop the spread of news and visuals about the anti-CAA protests happening from Azamgarh, UP to other districts in UP.

of Facebook, WhatsApp, and Twitter.<sup>220</sup>

In close-knit communities and smaller towns, an internet shutdown may not prove to be such an impediment in mobilizing people for a protest. This is what happened in Assam, where thousands of protesters defied curfews and an internet shutdown on December 11, 2019 to join a protest the next day on December 12. Respondents in Darjeeling, West Bengal and Sikhar, Rajasthan similarly expressed that the shutdowns did not pose an insurmountable obstacle to local organizing.<sup>221</sup> However, as Mantre Passah pointed out, in the case of a non-political and diverse group, such as his organization of street workers in Shillong, the suspension of the internet makes it more difficult for them to organize in large numbers together.<sup>222</sup>

## ii. Communication With the Public

The activists interviewed for this report described the internet shutdown as rendering them unable to complete their basic functions as HRDs.<sup>223</sup> A common thread amongst the activists and organizers was having to travel outside of an area to post updates on their social media. While some activists were able to engage in such travel outside their districts, others were unable to utilize their social media until a lockdown was lifted. This meant that a great deal of human rights abuses recorded during the protests were not brought to the attention of the public until days or weeks after the incidents took place.<sup>224</sup>

However, while civil society organizations may be able to deputize people to go to another district to post updates and leaders may use the

stage at mass rallies, individual protesters lack such capacity. They cannot immediately post or tweet about their experience.<sup>225</sup> At the same time, based on his reporting, Darshan\* was of the view that not all the farmers who participated in the farmers' protests were as concerned about the shutdown because their primary focus was on mobilizing the movement and ensuring that they did not leave the venue disheartened. He also believed that many of the farmers he spoke to were not very technologically savvy and primarily used their phones to speak to their families or to read the daily press updates sent by the organizers on WhatsApp.<sup>226</sup>

Many people, especially in smaller cities and rural areas, consume their news on social media, particularly WhatsApp and Facebook. Not everyone has a TV or can read the newspapers.<sup>227</sup> Thus, according to Tarique, a human rights and social activist in Azamgarh, UP, apart from effectively de-platforming activists, the internet shutdown also makes it difficult for the protesting masses to receive news about the outside world.<sup>228</sup>

Finally, an internet shutdown also impacts the families of protesters who are concerned about their well-being. Sadaf Jafar was arrested on December 19, 2019 during the anti-CAA protests in Lucknow, UP, and claims that her family was not informed of her arrest. According to Jafar, the internet shutdown further contributed to their fear and desperation because they were unable to use social media to find information about her whereabouts.<sup>229</sup>

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220 Interview with Ashish Ranjan, Activist for the Unorganized Sector Workers in Araria, Bihar (Feb. 2, 2021) (unofficial translation); Interview with Renu, Teacher & Social Worker in Darjeeling, who was involved in the protests in 2017 (Feb. 12, 2021) (name kept anonymous for security purposes). Renu said that the venue for the next protest or meeting would be decided at the end of each meeting.

221 Interview with Renu, *supra* note 219; see also *supra* text accompanying note 213; see also *supra* text accompanying note 202.

222 Interview with Mantre Passah, *supra* note 209.

223 Interview with Dr. Samujjal Bhattacharjya, *supra* note 212.

224 Interview with Rajpal Sekhawat, *supra* note 202.

225 Interview with Anjali Sheoran, *supra* note 201.

226 Interview with Darshan, Journalist covering the farmer protests in Delhi (Mar. 18, 2021) (name changed for security purpose).

227 Interview with Rajpal Sekhawat, *supra* note 202; see also *supra* text accompanying note 177.

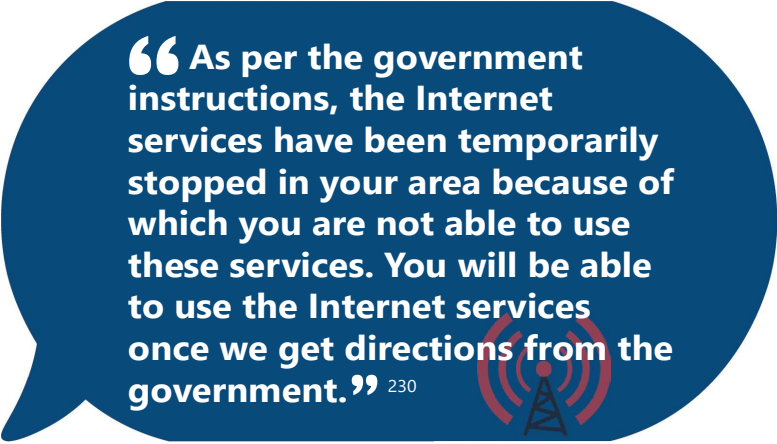
228 Interview with Tarique Shafique, *supra* note 218.

229 Interview with Ms. Sadaf Jafar, *supra* note 9.



### c. Impact on Civil Society Discourse

**“As per the government instructions, the Internet services have been temporarily stopped in your area because of which you are not able to use these services. You will be able to use the Internet services once we get directions from the government.”**<sup>230</sup>



This message was received on the phones of Jio users in Bhopal, Madhya Pradesh, informing them of an internet shutdown during the anti-CAA protests. There was no prior notice of the shutdown, and the order was not easily accessible; nor were users provided any certainty about when the internet would be restored, thus causing them “panic,” “tension,” and “confusion.”<sup>231</sup> In fact, the irony of internet shutdowns is that the people who are directly affected by them are least likely to see the order, even if it was to be posted online. As Ansab Amir Khan wrote about his experience with the internet shutdown at Aligarh Muslim University after police, the Rapid Action Force, and the Central Reserve Police Force were deployed and a student hostel room was burned by tear gas shells, “[t]he internet was shut down so we had no idea what was happening outside.”<sup>232</sup>

According to Mehroosh Shah, a law student and researcher from Jammu and Kashmir, the

uncertainty created by internet shutdowns is intended to demonstrate the state’s power over its citizens:<sup>233</sup> it transforms the internet into a “privilege” bestowed by the state that it can also take away.<sup>234</sup> An internet shutdown, perhaps counter-intuitively, may thus “normalize” them, meaning that future shutdowns, “even though unexpected, [will] not [be] unprecedented.”<sup>235</sup> A few respondents interviewed for this report in fact mentioned that unlike in Kashmir, their internet shutdown lasted “only” for a few days.<sup>236</sup>

Further, internet shutdowns are often ordered by the state in conjunction with curfews and movement restrictions under Section 144, CrPC. This two-pronged limitation is “inimical to any form of expression,” especially if its impact and enforcement activities are targeted at vulnerable people or minority communities.<sup>237</sup> According to Tarique, by ordering an internet shutdown, the government is signaling that it prefers suppressing speech and protests rather than engaging in dialogue with protesters, especially when the protesters are from a minority community.<sup>238</sup>

### d. Impact on Litigation and the Judiciary

Internet shutdowns impact litigation and affect the functioning of court processes in several serious ways that impact administrative procedures, advocate submissions, and access to justice. This section examines the effect of shutdowns on the judicial process and how citizen trust in the courts has been affected by these shutdowns.

230 This is the message received by Jio users in Bhopal, Madhya Pradesh in December 2019, during the anti-CAA protests. Pg (@Pg\_Pi3Gey), TWITTER, [https://twitter.com/Pg\\_Pi3Gey/status/1207982228321402882](https://twitter.com/Pg_Pi3Gey/status/1207982228321402882) (last visited July 28, 2021).

231 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh (Feb. 6, 2021 and May 22, 2021) (name kept anonymous for security purposes). See also, *Fresh ban on mobile internet for 48 hours*, THE SHILLONG TIMES (Jun. 17, 2018), <https://theshillongtimes.com/2018/06/17/fresh-ban-on-mobile-internet-for-48-hours/>.

232 Ansab Amir Khan, *A timeline of Protests at Aligarh Muslim University, As I Saw It*, THE QUINT (Jan. 8, 2020, 12:57 PM IST), <https://www.thequint.com/my-report/caa-protests-students-aligarh-muslim-university-violence-timeline#read-more>.

233 Rajat Gupta, *India Farmers’ Protests: Internet Shutdown Highlights Modi’s record of Stifling Digital Dissent*, THE CONVERSATION, (Feb 1, 2021), <https://theconversation.com/india-farmers-protests-internet-shutdown-highlights-modis-record-of-stifling-digital-dissent-154287>.

234 Interview with Mehroosh Shah, *supra* note 38; see also *supra* text accompanying note 187.

235 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh, *supra* note 8.

236 Interview with an anonymous school student and climate activist in Shillong, Meghalaya, *supra* note 212; see also *supra* text accompanying note 218; see also *supra* text accompanying note 201.

237 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh, *supra* note 8.

238 Interview with Tarique Shafique, *supra* note 218.

## i. Impact on Lawyers and Mitigation

Perhaps the best way to understand the impact of shutdowns on litigation is by looking at an individual case that demonstrates the challenges faced by lawyers and the judiciary. During the anti-CAA protests, Angaj Gautam filed a petition before the Gauhati High Court in Assam on behalf of his client, challenging the internet shutdown order in place in Assam and the constitutionality of the Telecom Suspension Rules. He explained the difficulties in constructing the factual narrative for preparing the “List of Dates and Events” for the petition, without the ability to conduct online research. He was forced to physically go through the newspapers of the past weeks and the research that was already on his laptop pre-shutdown to determine, for example, when the CAA Bill was first tabled, when it was discussed, how many parliamentarians voted in favor of it, when the protests in Assam began, and when the internet shutdown order was first promulgated in Assam. He kept the annexures to the Petition minimal, including only a copy of the CAA, the Telecom Suspension Rules, and a copy of the internet shutdown notification being challenged. To prepare the substantive grounds for the challenge, he asked his friends to look at the written submissions that had been filed in the Supreme Court in *Anuradha Bhasin* (and were available online)<sup>239</sup> and send them to him via SMS, leaving little scope for innovation in legal argumentation. He estimates that he was sent over 200 messages with the submissions.<sup>240</sup>

Angaj said that over the three days he spent drafting the petition, the WiFi and broadband was mostly down, working suddenly and unexpectedly at his house for around only 30-45 minutes twice. During those brief periods, he downloaded the documents necessary for the annexures and tried to perform some online

research. He printed the petition using the LAN printer and filed a hard copy of it before the court.

The listing and hearing before the court itself were difficult because there was no internet on the court’s premises. However, the petitioners succeeded, and on December 19, 2019, the Gauhati High Court directed the Assam government to restore the internet by 5:00 pm.<sup>241</sup>

Internet shutdowns also affect the physical infrastructure of the court system—the display boards do not update online in real time, meaning that lawyers cannot estimate when their matter will be taken up; the cause list, case status, and case documents on the court’s websites do not work, creating difficulties for lawyers who have not downloaded the documents in advance; and communication and coordination between lawyers within a chamber on their office WhatsApp groups are negatively affected. Additionally, many litigants are only able to send documents to their lawyers through WhatsApp, which is also suspended during a shutdown.<sup>242</sup>

## ii. Impact on the Courts and Mitigation

All respondents interviewed for this report were asked why they did or did not challenge the internet shutdown before courts. The responses received can be summarized as follows.

First, there is distrust in the judicial system, either because of (a) the inordinate delays; (b) “judicial evasion,”<sup>243</sup> i.e., the failure of the court to decide the *lis* before it in a timely manner; or (c) the lack of effective implementation of a court order. In support of these arguments, the respondents cited the courts’ delay in deciding

239 *Bhasin v. Union of India*, *supra* note 56.

240 Interview with Angaj Guatam, *supra* note 187.

241 *Banashree Gogoi v. Union of India*, *supra* note 185.

242 Interview with Angaj Guatam, *supra* note 187; *see also supra* text accompanying note 8.

243 Gautam Bhatia explains the term “judicial evasion” as “a situation, when through its very failure to decide, the Court effectively does decide – in favour of the party that benefits from the status quo, which is invariably the union government.” Gautam Bhatia, *Judicial Evasion, Judicial Vagueness, and Judicial Revisionism: A Study of the NCT of Delhi vs Union of India Judgement(s)*, SSRN (June 27, 2020), <http://dx.doi.org/10.2139/ssrn.3637009>; Gautam Bhatia, ‘O Brave New World’: *The Supreme Court’s Evolving Doctrine of Constitutional Evasion*, *Indian Constitutional Law and Philosophy* (Jan. 6, 2017), <https://indconlawphil.wordpress.com/2017/01/06/o-brave-new-world-the-supreme-courtsevolving-doctrine-of-constitutional-evasion/>. While none of the respondents explicitly used the term “judicial evasion,” their answers conveyed the same sense.

the challenges to the CAA, the abrogation of Article 370 which guarantees autonomy for Kashmir, and the habeas corpus petitions relating to the alleged illegal detentions in Jammu and Kashmir after August 5, 2019.<sup>244</sup>

Second, there was a belief amongst many activists that judicial challenges were not their fight to fight. They could focus on activism, protests, and raising citizen awareness, but some said that the lawyers should take up the relevant issues and go to court. Especially at the initial moment of the shutdown, HRDs are more concerned with pressing issues related to the underlying protest, communications difficulties, and filing their stories, rather than thinking about potential litigation.<sup>245</sup>

Third, as some lawyers and activists pointed out, the problem with short internet shutdowns is that by the time the matter can be effectively heard and decided, the internet has been restored and the case would likely be considered infructuous by the courts.<sup>246</sup> For instance, the Delhi High Court dismissed a petition challenging the internet shutdown in Delhi on the ground that it had become infructuous.<sup>247</sup> Chhatrapati Sarapurua, a businessman, petitioned the Udaipur District Court to challenge the three-day internet shutdown order in 2017, which had reportedly been ordered without notice to the public. However, by the time the Court issued notice on his petition, the internet was restored, and the petition was effectively rendered moot.

This is what occurred in the Gauhati High Court case as well (as was discussed above).

There was no subsequent hearing on his petition, and Sarapurua does not know what happened to the case.<sup>248</sup> In this way, short shutdown orders end up creating a “false sense of normalcy,” under which the internet is restored but the underlying legal structure remains.<sup>249</sup>

Finally, there are serious reputational costs of going to court and taking on the government, especially for persons of marginalized and vulnerable communities; these persons must “pick and choose their battles” carefully.<sup>250</sup> In some instances, the government has punished or persecuted HRDs for taking up litigation in courts on behalf of vulnerable communities. This persecution can take the form of false legal charges, being impugned by government officials in public fora, and being labeled as a potential security threat to the nation.

Nevertheless, despite these limitations, when lawyers do challenge internet shutdowns in courts, their challenges are typically successful. As described above, in Angaj’s case, the Gauhati High Court directed restoration of the internet. Similarly, in the *Anuradha Bhasin* litigation, the Supreme Court provided some general relief in terms of transparency and the publication of orders (even if no orders were promulgated for the specific internet shutdown in Jammu and Kashmir).<sup>251</sup> However, one must remember that

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244 Interview with Tarique Shafique, Human Rights and Social Activist in Azamgarh, UP (Jan. 4, 2021) (unofficial translation); Interview with Shrimoyee Ghosh, Academic in Bengaluru, India (Jan. 15, 2021); Interview with a North Kashmiri lawyer and activist (Jan. 6, 2021) (name kept anonymous for security reasons). See also, Habeel Iqbal (@habeeliqbal), TWITTER, <https://twitter.com/habeeliqbal/status/1390249522698194950> (last visited July 28, 2021). This tweet mentions the 8+ month delay by the J&K High Court in ruling on a *habeas corpus* petition for a “78 year old ailing prisoner,” who reportedly died in prison. For further details see, Apoorva Mandhani, *99% habeas corpus pleas filed in J&K since Article 370 move are pending, HC Bar tells CJI*, THE PRINT (Jun. 28, 2020, 3:12 PM IST), <https://theprint.in/judiciary/99-habeas-corporus-pleas-filed-in-jk-since-article-370-move-are-pending-hc-bar-tells-cji/450281/>.

245 Interview with Sadaf Jafar, *supra* note 9; see also *supra* text accompanying note 210; see also *supra* text accompanying note 177.

246 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh, *supra* note 8; see also *supra* text accompanying note 219.

247 Tripathi, *supra* note 176.

248 Interview with Chhatrapati Sarapurua, Businessman in Udaipur (Jan. 1, 2021) (unofficial translation). See also, Japreet Grewal, *Internet Shutdowns in 2016*, THE CENTRE FOR INTERNET & SOCIETY, INDIA, <https://cis-india.org/internet-governance/files/internet-shutdowns> (last visited July 19, 2021); *Plea to quash order on net ban in Udaipur*, THE TIMES OF INDIA (Apr. 21, 2017), <https://timesofindia.indiatimes.com/city/jaipur/plea-to-quash-order-on-net-ban-in-udaipur/articleshow/58287646.cms>.

249 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh, *supra* note 8.

250 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh (Feb. 6, 2021); see also *supra* text accompanying note 212; see also *supra* text accompanying note 208.

251 *Bhasin v. Union of India*, *supra* note 56.

the judiciary has been reluctant to recognize a right to access the internet and that no order has been decided by the courts requiring the government to lift internet restrictions.



# ■ VII. IS A “SENSIBLE” INTERNET SHUTDOWN POLICY POSSIBLE?

Based on a broad review of internet shutdowns orders, governments have pretextually justified them by invoking law and order, as a means of preventing the spread of misinformation and inflammatory posts, and as a means of preventing communal or ethnic clashes.<sup>252</sup> Thus, the question arises: do internet shutdowns help achieve the above-stated goals, and if so, at what cost? Consequently, is a “sensible” internet shutdown policy possible? At the outset, it is important to note that no analysis or review of this issue seems to have been conducted by the government of India.<sup>253</sup>

Many respondents, including those from Jammu and Kashmir, believed that there could never be a sensible internet shutdown policy in practice because “internet shutdown is [a] policy designed to curb dissent.”<sup>254</sup> Regardless of which party is in power, the respondents believed that all governments try to control the public narrative and may use shutdowns as a tool to further their propaganda, shut down dissent, or respond to majoritarian sentiments.<sup>255</sup> Allowing internet shutdowns to be part of the government toolkit will always be a

danger to robust public discourse.<sup>256</sup>

Some respondents believed that internet shutdowns may be necessary to prevent violent communal or ethnic clashes, violent protests, and rumormongering, but should be ordered in a transparent manner, with due procedural safeguards. They acknowledged that in many cases social media can spread misinformation and inflame tensions. Thus, Samuel\*, for instance, argued that internet shutdowns should never be ordered preventively based on “perceptions of impending clashes.” However, if the situation reaches a certain threshold level of violence (due to, for example, ethnic clashes or the spread of misinformation), shutdowns should be permitted. Using this metric, Samuel believed that the internet shutdown was correctly ordered in Meghalaya during the anti-CAA protests.<sup>257</sup>

Still, others acknowledged that although internet shutdowns may reduce the influence of rumormongering, they are not worth the cost and collateral damage imposed on the people. In trying to evaluate whether a sensible internet shutdown policy is possible,

252 Torsha Sarkar et al., *Internet Shutdowns: Threats to Digital Access* (Oct. 2020), <https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/2.-Internet-Shutdowns-India-report.pdf>. See also the orders analyzed in the previous sections of this report.

253 Nair, *supra* note 23.

254 Interview with an anonymous lawyer working with marginalized communities in Bhopal, Madhya Pradesh, *supra* note 8.

255 Gupta, *supra* note 232.

256 *Id.*

257 Interview with a school student & climate activist in Shillong, Meghalaya, *supra* note 212.

certain questions need to be answered. Under international law, states can place limits on human rights, including on the freedom of expression, in times of national emergency, however those limits must be a) necessary to deal with an emergency, b) proportional to the emergency, c) prescribed by law, and d) non-discriminatory. Furthermore, the situation must be severe; common criminal activity is insufficient to invoke an emergency. Each of the shutdowns described above in this report would be assessed in accordance with these four questions to ensure that India is complying with its obligations under human rights treaties like the ICCPR. However, a different set of questions is asked when assessing the legality of internet shutdowns under Indian constitutional and regulatory law, rather than international law.

#### a. Are the Telecom Rules Being Used to Allow Arbitrary Internet Shutdowns in India?

Much has been written about the legal shortcomings of the Telecom Suspension Rules, including their deficiency in terms of natural justice, the Review Committee's lack of real power, and the absence of a sunset clause.<sup>258</sup> In addition, there is no judicial oversight over the government's actions, which some commentators have argued is necessary after the Supreme Court's privacy decision in *K.S. Puttaswamy v Union of India*.<sup>259</sup> In its unanimous decision, the Supreme Court held that the right to privacy was recognized by the Constitution and that any limitation on that right by the government must be put in place according to an established legal procedure. Despite this decision by the Court, the TSRs and their enforcement has not changed in order to respect individuals' right to privacy.

Relatedly, concerns have been raised about the arbitrariness inherent in the implementation of shutdown orders.<sup>260</sup> As discussed already,

Rajasthan has experienced the second largest number of internet shutdowns in the country, including one based on the tenuous justification of preventing malpractice in competitive examinations. While these orders have been challenged before a High Court,<sup>261</sup> very little pressure has been placed on the government to limit its shutdowns to severe or emergency circumstances.

Although the Supreme Court in *Anuradha Bhasin v. Union of India* introduced certain procedural safeguards, such as requiring periodic reviews of shutdown orders and a ban on indefinite shutdowns, these do not seem to have had any effect. A wide variety of often-conflicting reasons have been used to justify the continuing 2G restrictions in Jammu and Kashmir post-*Anuradha Bhasin*.<sup>262</sup> These range from the introduction of a (controversial) new domicile law (April 3, 2020) and the onset of summer and the melting of snow (May 27, 2020), to terrorists' interest in elections (November 12, 2020), election campaigning (November 26, 2020), the likelihood of misuse of 4G services to target political candidates and election workers (December 11, 2020), and the high voter turnout in the elections (December 25, 2020).<sup>263</sup> All of this suggests that internet shutdown orders are inherently arbitrary.

#### b. Are Internet Shutdowns Effective?

In January 2021, Forbes India reported:

"In October 2020, the Parliamentary Standing Committee on Information Technology had summoned representatives from the Union Home Ministry, and Delhi and Bihar state governments to ask if they knew internet shutdowns were effective. All the representatives were clueless, and did not know what metrics were used

258 Nayak, *supra* note 55.

259 Vrinda Bhandari & Karan Lahiri, *The Surveillance State: Privacy and Criminal Investigation in India: Possible Futures in a Post-Puttaswamy World*, 3(2) Univ. of Oxford Human Rights Hub J. 15 (2020).

260 Sarkar *et al.*, *supra* note 251.

261 Rajasthan HC seeks govt reply on internet shutdown, Times of India, (Oct. 27, 2021), <https://timesofindia.indiatimes.com/city/jodhpur/hc-seeks-govt-reply-on-net-shutdown/articleshow/87290748.cms>.

262 Shafaq Shah, *140 Changing Reasons For J&K's High-Speed Internet Ban*, ARTICLE14 (Feb. 5, 2021), <https://www.article-14.com/post/140-changing-reasons-for-j-k-s-high-speed-internet-ban>.

263 *Id.*

to determine their effectiveness. While the Home Ministry and the two state governments maintained that internet shutdowns were essential to stop violence during riots and to maintain law and order—claims that have been repeated in the Republic Day shutdown orders as well—they could not establish a causality between internet shutdowns and curbing riots.”<sup>264</sup>

Empirical research done by Jan Ryzdak, an international expert on digital rights, found that in India internet shutdowns are “clearly not uniformly effective but remain prohibitively costly when maintained.”<sup>265</sup> He stated that removing access to social media “can turn a predictable situation into one that is highly volatile, violent, and chaotic”<sup>266</sup> and that “violent mobilization seems to grow in intensity during blackouts.”<sup>267</sup> Thus, at the very least, there is no empirical basis to support the argument advanced by the government that internet shutdowns are demonstrably effective in reducing the influence of rumors and curbing violence.

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264 Agrawal, *supra* note 140.

265 Jan Ryzdak, *Of Blackouts and Bandhs: The Strategy and Structure of Disconnected Protest in India*, working paper, (Feb. 7, 2019), available at <https://ssrn.com/abstract=3330413>.

266 *Id.*

267 *Id.* at 44-45.

# VIII. CONCLUSION AND RECOMMENDATIONS

Internet shutdowns are proliferating across India, so what was once a problem for Kashmiris who lost access to the internet for over a year is now a problem for anyone living in areas that might play host to protests or activists criticizing the government. The existing regulatory framework around internet shutdowns remains vague, opaque, and open to abuse by an increasing number of state and national politicians and police who see them as a way to control the flow of information going to their constituents. Even though the regulations discuss the requirement of an emergency situation that goes beyond normal law and order issues, internet shutdowns are now more commonly being used to deal with non-emergency situations that involve public criticism of the government.

At best, policymakers are using shutdown tools to deal with day-to-day criminal issues, and at worst, politicians are using them to squelch any criticism of their governance. This poses a threat not only to India’s rule of law, but also to its democratic institutions and, most importantly for the purposes of this report, the human rights community. As described above, internet shutdowns severely impact almost every member of the human rights community, from lawyers who cannot access case files, to journalists who cannot record abuse by state actors, to civil society actors who are unable to spread their messages to the community. Therefore, rather than allowing shutdowns to become a normal occurrence throughout the country, the following recommendations should be adopted to stop the stream of shutdowns and increase access to human rights, including the right to free expression and information.

**TABLE 1** RECOMMENDATIONS FOR THE GOVERNMENT OF INDIA

1	Repeal the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules of 2017 and remove the legal basis and power for authorizing internet shutdown.
2	In the alternative, ensure compliance with judicial decisions that have recognized a digital right to privacy and the need for government officials who order internet shutdowns to provide reasoning and notice in writing for those orders.
3	<p>As a second alternative, amend the Telecom Suspension Rules such that:</p> <ul style="list-style-type: none"> <li>• Internet shutdowns cannot be authorized preventively, whether in anticipation of a “law and order” situation or to prevent malpractice in competitive exams</li> <li>• Internet shutdowns cannot be used to suppress free speech or stop any protests around human rights violations</li> <li>• There is judicial oversight over every government order of an internet shutdown, such that prior permission of a court is required before an internet shutdown is authorized</li> <li>• The public is proactively notified about an anticipated shutdown with sufficient time to put their affairs in order</li> <li>• A maximum time is established beyond which no shutdown can be authorized</li> </ul>

**TABLE 1 RECOMMENDATIONS FOR THE GOVERNMENT OF INDIA (CONTINUED)**

4	Amend the Blocking Rules: these are less restrictive rules, but are being deployed without a transparent framework as a means of suppressing dissent in some states. <ul style="list-style-type: none"><li>• Provide for judicial oversight of blocking orders</li><li>• Provide copies of these rules directly to the persons aggrieved</li><li>• Follow due process: hear the aggrieved person before taking a decision and provide a chance to appeal</li><li>• Provide statutory recognition of the right to internet access as a fundamental right</li></ul>
5	Proactively publish statistics on the number of shutdown orders issued by every state government and by the government of India.
6	Ensure that any limitations on access to the internet abide by the international legal requirements for suspension of rights during emergency situations; namely, that such limitation must be (a) prescribed by law, (b) necessary to address the emergency, (c) proportional to the emergency, and (d) non-discriminatory in its enforcement.
7	Conduct a national study to empirically determine whether shutdowns “work,” or whether they are they mostly counter-productive in terms of increasing antipathy toward the state, increasing the influence of rumors and disinformation, and cutting off channels of communication and coordination between protesters and governments.

**TABLE 2 RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY**

1	Proactively engage with the government of India on issues related to internet shutdowns, especially prolonged shutdowns.
2	Provide support and training to Indian law enforcement on intelligence and handling of law and order issues.

**TABLE 3 RECOMMENDATIONS FOR CIVIL SOCIETY ORGANIZATIONS, UNIONS, AND LAWYERS’ ASSOCIATIONS**

1	Conduct assessments of the economic, human, social, and human rights impacts of internet shutdowns.
2	Improve existing data collection efforts, including supplementing SLFC’s internet shutdown tracker.
3	Assist potential litigants and aggrieved persons with challenging internet shutdown orders.
4	Conduct and publish case studies to facilitate an understanding of the effectiveness of internet shutdowns and the cost they impose on society.





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