
CASE COMMENT: ANURADHA BHASIN v. UNION OF INDIA (2020)

Rituraj Mal Deka***CITATION: AIR 2020 SC 1308****BENCH:** Justice N.V. Ramana, Justice B.R. Gavai, and Justice Subhash Reddy**JUDGEMENT:** 10 January 2020**INTRODUCTION**

The landmark case of Anuradha Bhasin v. Union of India emphasizes the crucial value of freedom of speech and expression in a democratic society. In August 2019, the government in Jammu and Kashmir decided to place limits on communication networks, including internet and mobile phone services. This decision gave rise to the case. The limits had a significant impact on people's capacity to exercise their basic right to free speech and expression, even if they were justified on the basis of upholding law and order and combating terrorism. Particularly in the context of an area that has been impacted by instability and violence, the case raised significant issues regarding the appropriate balance between the need for security and the preservation of [civil freedoms](#).¹ The Supreme Court's decision in the case marks a critical turning point in the evolution of Indian constitutional law as it reiterates the significance of constitutional rights in a democratic society and offers crucial advice on the boundaries of governmental authority when it comes to limiting basic rights. The issue has important ramifications for the entire nation, not just Jammu and Kashmir, especially in light of recent government steps that appear to be stifling democratic discussion and criticism. [Anuradha Bhasin v. Union of India](#) is a landmark win for civil liberties and democratic principles, and it serves as a reminder that a democratic society cannot function without the preservation of basic rights.²

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¹ Anuradha Bhasin V/S Union of India (2020) Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-3164-anuradha-bhasin-v-s-union-of-india.html> (Accessed: 10 May 2023).

² Anuradha Bhasin v Union of india - case study (2021) Main. Available at: <https://legalbonanza.com/leading-cases-judgements/anuradha-bhasin-v-union-of-india-case-study/cid5283727.htm#:~:text=The%20petition%20was%20filed%20by,the%20newspaper%20since%20August%206> (Accessed: 10 May 2023).

BACKGROUND AND FACTS OF THE CASE

A total communication blackout was implemented in the state of Jammu and Kashmir by an order from the Indian government's Ministry of Home Affairs in August 2019. The edict essentially shut off the region's seven million citizens from the rest of the world by outlawing all internet, mobile, and landline services. In order to stop terrorist assaults and uphold peace and order in the area, the government justified the action. The Jammu and Kashmiri people's everyday life was severely impacted by the communication embargo. People were unable to contact their relatives and friends who lived outside the area, students were unable to access online educational materials, and firms were unable to conduct business.

The limitations had a huge influence on press freedom as well since journalists were unable to access the internet and report on the local events as they were happening. The executive editor of the Kashmir Times newspaper, Anuradha Bhasin, petitioned the Supreme Court to declare the communication ban to be unconstitutional. She claimed that the limitations were against the essential liberties of press freedom, access to information, and freedom of speech and expression, all of which are protected by Articles 19(1)(a), 19(1)(g), and 21 of the Constitution³. Bhasin said that the limits had been placed by the government without any indication of a time limit or justification for their retention. She claimed that the limitations were arbitrary, out of proportion, and in violation of the necessity and proportionality standards. She further contended that there was no proof provided by the government that the limits were required to stop terrorist acts or preserve law and order.

The Jammu and Kashmir Public Safety Act, which permits the incarceration of people without a trial for up to two years, was also contested in the appeal. According to the petition, the Act went against the essential liberties of life and liberty that are protected by Article 21 of the Constitution. During the many months that the Supreme Court heard the issue, some of the local communication limitations were eased. A three-judge panel, made up of Justices N. V. Ramana, R. Subhash Reddy, and B. R. Gavai, heard the case. The government was required to submit an affidavit outlining the justifications for the communication limitations by the Supreme Court in October 2019. The government responded, asserting that the limitations were required to stop terrorist attacks and preserve regional peace and order.

³ Constitution of India, 1950

ISSUES

The issues in the Anuradha Bhasin v Union of India case were:

1. Whether the government of Jammu and Kashmir breached the basic right to freedom of speech and expression protected by Article 19(1)(a) of the Constitution by imposing a full communication blackout.
2. Whether the Constitution's Article 19(1)(a) and Article 19(1)(g) guaranteeing freedom of speech and expression were breached by the communication blackout's restrictions on press freedom and the ability to acquire information.
3. Whether Article 21 of the Constitution's fundamental rights to life and liberty were breached by the Jammu and Kashmir Public Safety Act, which permits the imprisonment of people without a trial for up to two years.
4. Whether the government's limits on communication networks were proportional and required to stop terrorist threats and uphold law and order in the area

RULES

In Anuradha Bhasin v Union of India, the Supreme Court relied on the following rules and provisions of the Constitution:

- Article 19(1)(a) of the Constitution, which guarantees the right to freedom of speech and expression. The Court noted that this right is not absolute and can be subject to reasonable restrictions under Article 19(2) of the Constitution.
- Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Court noted that this right includes the right to access information and communicate freely and that any restrictions on this right must be in accordance with the principles of reasonableness and proportionality.
- Article 32 of the Constitution, allows individuals to approach the Supreme Court directly for the enforcement of their fundamental rights.
- The principle of proportionality requires that any restriction on fundamental rights must be proportionate to the objective sought to be achieved. The Court noted that restrictions on communication networks must be narrowly tailored to achieve a specific objective and should not be a blanket prohibition.

- The doctrine of least intrusive means requires that any restriction on fundamental rights must be the least intrusive means of achieving the objective sought to be achieved. The Court noted that the government must exhaust all other means before resorting to a complete communication blackout.
- The principle of necessity requires that any restriction on fundamental rights must be necessary to achieve a legitimate aim. The Court noted that the government must demonstrate that the restriction on communication networks was necessary to prevent terrorist attacks and maintain law and order in the region.

JUDGMENT

On January 10, 2020, the Supreme Court issued its ruling in *Anuradha Bhasin v. Union of India*. The Court ruled that the freedom of speech and expression, as well as the right to information access, are fundamental rights that are necessary for a democratic society to function. The Court stated that this right cannot be curtailed for nebulous or unproven reasons, and any restrictions on this right must be necessary and reasonable in relation to the goal being pursued. In accordance with Article 19(1)(a) of the Constitution, the Court also declared that the right to access the Internet is a basic right. The Court stated that as the internet is a potent medium for connecting with others, expressing one's thoughts, and getting information, any limitations placed on its use must be both specific and appropriate [to the goal at hand](#).⁴

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The Court looked at the government's directives restricting communication in Jammu and Kashmir and found that they did not describe the justifications for the limitations or why a total communication blackout was required. The orders, according to the Court, were not legal and were not supported by the reasons upon which they were imposed. The Court ordered the administration to evaluate the limitations and gradually restore communication networks while taking into account the current state of security. The administration was also told by the court to post any orders and notices relating to the application of limitations on communication networks online. The Court emphasized the value of a democracy's freedom of speech and expression and said that any limitations on this right should be carefully considered.

The court ruled that the government has a responsibility to defend the right to freedom of speech and expression and that any limitations on this right must be the least restrictive method

⁴ Unnati Mishra, S.C.- ordinator (2022) [case brief] *Anuradha Bhasin v. Union of India* by Arushi Jain, We are MyLawman. Available at: <https://www.mylawman.co.in/2022/02/case-brief-anuradha-bhasin-v-union-of.html> (Accessed: 10 May 2023).

of attaining the justifiable goal that is being pursued. The Court upheld the value of the freedom of speech and expression, as well as the right to information access, and concluded that any limitations on this right must be carefully considered to determine if they are necessary and reasonable. The decision stated that the ability to access the Internet is a basic right protected by the Constitution and acknowledged the significance of the Internet as a tool for getting information and expressing ideas.

ANALYSIS

The ruling in *Anuradha Bhasin v. Union of India* represents a significant advancement in Indian constitutional law, particularly with regard to the defense of democratic principles and civil freedoms. In the face of government acts that might stifle dissent and democratic discussion, the Court's tenacious defense of the right to freedom of speech and expression shows its dedication to protecting democratic norms. The Court's reliance on the proportionality criterion is especially notable as it demonstrates the rising prominence of this idea in human rights law. According to the proportionality principle, every restriction on basic rights must be appropriate, necessary, and proportionate to the goal being pursued.

A significant validation of the necessity to balance the opposing interests of national security and civil rights is provided by the Court's application of this concept in the context of the limits on communication networks in Jammu and Kashmir. In light of the expanding significance of digital rights in the context of contemporary communications technology, the Court's recognition of the right to access the internet as a basic right is equally noteworthy. The right to access information and the right to freedom of speech are only two examples of the many fundamental rights that may now be effectively exercised online. The Court's recognition of the right to access the internet as a fundamental right is an important step towards ensuring that these rights are protected in the digital age.

AFTERMATH OF THE JUDGMENT

The government's activities have been criticized on several occasions for violating the right to free speech and expression. For instance, the government has been charged with exploiting the sedition statute to stifle dissent and opposition to its actions. Any act or expression that is considered to be seditious or disloyal to the government is prohibited by the sedition legislation, which goes back to colonial times. Concerns have also been raised regarding the government's growing use of internet blackouts and other limitations on online communication. India experienced over 100 documented cases of internet shutdowns in 2020, according to a study by the Internet Shutdowns Tracker, making it the country with the most such events worldwide. According to the administration, these limitations are required to uphold law and order and stop the dissemination of false information and fake news. Critics counter that they are frequently employed as a means of silencing dissent and critical voices.⁵

The legislative framework governing freedom of speech and expression in India has been called for revision. Others have advocated for more accountability and transparency in the use of internet shutdowns and other limits on online communication, while some have called for the repeal of the sedition statute. An important discussion on the limits of governmental authority in a democracy and the necessity of defending fundamental rights like freedom of speech and expression has been ignited by the decision in *Anuradha Bhasin v. Union of India*. The case's aftermath has brought to light the continued difficulties and complexity of juggling these conflicting interests in the setting of contemporary communications technologies.

CONCLUSION

Because it underscores the rising significance of digital rights in the context of contemporary communications technology, the judgment's recognition of the ability to access the internet as a basic right is particularly noteworthy. An essential endorsement of the proportionality principle, a foundational idea in human rights law, is provided by the court's decision that any limitations on the freedom of speech and expression must be justified and reasonable. In general, the ruling in *Anuradha Bhasin v. Union of India* represents a substantial improvement in India's defense of civil freedoms and democratic principles. It underscores the significance of constitutional rights in a democratic society and offers crucial advice on the limitations of government authority to restrict basic rights. The case serves as a reminder of the critical role

⁵ *Supra* Note 1 at 1

of the judiciary in upholding the rule of law and protecting fundamental rights in a democratic society.

