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IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU
WRIT PETITION NO. _____/2019

BETWEEN:

...Petitioner

AND

...Respondents

Union of India & Anr.

SYNOPSIS

The Petitioner is an Indian citizen and a Kashmiri by birth. He currently resides and studies in Bengaluru but hails from the Pulwama district of Kashmir, where his father, mother, and grandmother as well as other relatives continue to reside. Though the Petitioner moved out of Pulwama in 2016 to pursue higher education, he continues to have an intimate connection with Pulwama as he has lived there for 21 years of his life.

Since 05 August 2019, an unprecedented and total communications blackout has been prevailing in all districts of Kashmir. This opaque, overbroad, and unreasonable decision by Respondents has resulted in the Petitioner being separated from his family and loved ones in an illegal and arbitrary manner. The communications blackout in all districts of Kashmir began in a limited manner on the night of 04 August 2019, and was extended to a complete blockade by the morning of 05 August 2019 of communication and internet services in all districts. The Petitioner last spoke to his family on 04.08.2019 at 10.45pm. As of 17 August 2019, news reports suggest a limited easing of restrictions in relation to landline services, but it doesn't bring any relief to the Petitioner as there is no landline connection installed at the Petitioner's home. The legal basis for this communications blackout is not available in the public domain, and it has been reported that besides other measures, prohibitory orders on movement, and association have also been issued under Section 144 of the Criminal Procedure Code, 1973.

The illegal and arbitrary actions of the Respondents have left the Petitioner with no means whatsoever to confirm the safety of his family. His father suffers from Diabetes, his mother has had to deal with Thyroid problems and his grandmother has several old age related issues. He has been left with no means to confirm whether his family members, suffering from medical ailments, have adequate access to healthcare facilities at a time

when news reports suggest medicines are not sufficiently available throughout Kashmir due to imposition of an undeclared curfew.

By unconstitutionally denying the Petitioner his fundamental right to receive information and communicate, and to live a life with dignity which encompasses a right to family life, the imposition of the communication shutdown by the Respondents violates Articles 14, 19(1)(a), and 21 of the Constitution of India.

This Writ Petition, filed under Article 226 of the Constitution of India, seeks, among other things, the issuance of a writ / order / direction to the Respondents to immediately restore the operation of all modes of communication in all districts of Kashmir to enable the Petitioner to meaningfully exercise his fundamental rights to family life and communication, so as to obtain a sense of security regarding the safety and wellbeing of his family and loved ones. Recognizing the tenuous relationship between the interests of the State and individual liberty, this Writ Petition is also seeking directions to ensure that henceforth there are no unreasonable and arbitrary communication shutdowns imposed in an illegal and unconstitutional manner without due regard to the constitutionally protected fundamental rights.

This complete communication blockade violates the rights under Articles 14, 19(1)(a) and 21 as it is an illegal, arbitrary and disproportionate violation of fundamental rights, and hence is unconstitutional for the following, among other, reasons:

I. **Lack of Legal Basis:**

The Respondents have failed to adequately publish and / or publicize the legal basis of the extreme communication blackout imposed throughout Kashmir. Citizens are left unaware about the nature of the order, the issuing authority, the scope and extent of the blockade, and whether there are multiple orders or only a single one. Along with there being no publicity of the initial order (s), no publicity has been made of any review exercise conducted by the Respondent in this regard either. No prior notice was provided to residents before taking such drastic measures to enable them to take adequate preparatory measures. Assuming news reports are correct and an order under Section 144 Cr.P.C. has been relied upon to impose the communications blockade, it is *ex facie* apparent that the purported order does not refer to imposing a communications blockade. On 5 August 2019, while responding to debate in Rajya Sabha on the Jammu and Kashmir

Reorganization Bill, 2019 and the Statutory Resolution, Hon'ble Home Minister Amit Shah also did not provide any cogent reason for complete communication blockade. Furthermore, if the situation is peaceful in the Kashmir valley, as claimed by the Respondents, then there is no basis to retain the extreme measure of clamping down on all forms of communication.

II. Lack of Legitimate Aim:

The failure to publicly disclose the order (s) imposing the communications blockade leave no means whatsoever for the Petitioner or this Hon'ble Court to ascertain whether the same has been passed in pursuance of a legitimate aim. On the contrary, publicly available information regarding events preceding the imposition of the blackout suggest that any shutdown of communication channels could have had the effect of endangering the lives of people residing in Kashmir. As per a Security Advisory issued by Jammu and Kashmir Home Department on 2 August 2019, Amarnath Yatris and tourists were asked to vacate the Kashmir valley as soon as possible because of intelligence inputs received on terror threats. Before this advisory was issued, military troop build-up was gaining momentum in the Kashmir valley which was also creating panic. In light of these facts, instead of a shutdown, there was a pressing need to retain communications networks to ensure that citizens can exercise their right to life and ensure their safety. Moreover, for people away from their families settled in Kashmir, shutting down all means of communication, in the face of an anticipated terror strike, amounts to mental and emotional harassment. In absence of publicly stated legitimate aim, the total communication shutdown violates the right to freedom of speech and expression of people of Kashmir en masse, the right to know of people not just in Kashmir but outside Kashmir also and right to be able to communicate with one's family members. Such a total communication blockade is arbitrary and imposes unreasonable restriction on life and liberty without following any due process of law.

III. Lack of suitability under extraordinary circumstances:

Communication blockades are an irrational method of ensuring public safety during any law and order situation. On the contrary communication blockade cause more panic and paranoia and prevent even law enforcing agencies from using communication channels to dispel fears and doubts. In the absence of open communication channels, which can be used by authorities to communicate with

public, to set matters right, rumours and unsubstantiated claims abound, creating further panic. Empirical studies also demonstrate that network shutdowns are associated with increase in chaotic forms of violent collective action which require less communication, coordination and preparation than peaceful protests.

IV. Unreasonable restrictions amounting to extinguishment of right:

The communication blockade is so complete and severe that it is not just an unreasonable restriction but denies the right to information, to communicate and to know altogether. The helplines set up are insufficient and as per media reports, residents have to wait for days and then spend hours in queues before being able to talk to their families and friends for a few seconds. The Petitioner's mother herself was able to make only a short call to Petitioner's sister residing in Mumbai, which was made from the District Collector's Office, that too a week after the communication blockade was imposed. This amounts to extinguishment of rights en masse, whereas, any reasonable restriction on fundamental rights has to be proportional to the stated legitimate aim and selectively imposed following review of each case individually.

V. Disproportionate and discriminatory:

If a terror strike is imminent, the entire population cannot be put under a total communication clampdown to prevent misuse of communication channels by a few. This amounts to disproportionate restrictions on exercise of fundamental rights and freedoms. Further, anticipating an impending terror strike, an advisory was issued to Amarnath Yatris and tourists to vacate the valley but once Section 144 was imposed two days later, the residents of Kashmir were not even allowed to venture outside their neighbourhoods. Those who managed to vacate were also not subjected to severe clampdown and could freely communicate with their family members, while the residents of Kashmir were not only living under the shadow of an impending terror strike but also could not communicate with anyone within or outside Kashmir. This amounts to discrimination among people without any rational and legal basis and with no nexus with any underlying legitimate aim.

VI. Availability of less restrictive alternatives:

This is a wholesale ban on communication services. There is no information on whether less restrictive means were employed and were found to be wanting.

Shutdown of even landline services which only allow one on one conversation and which, reportedly, were not even suspended during Kargil War, further substantiates that there was no application of mind to finding less restrictive alternatives. Landline numbers of hospitals are also not reachable, as per some reports. Shutdown of Cable television services and communication blockade which is hampering the functioning of the press is adversely affecting people's right to know about what is happening in their region.

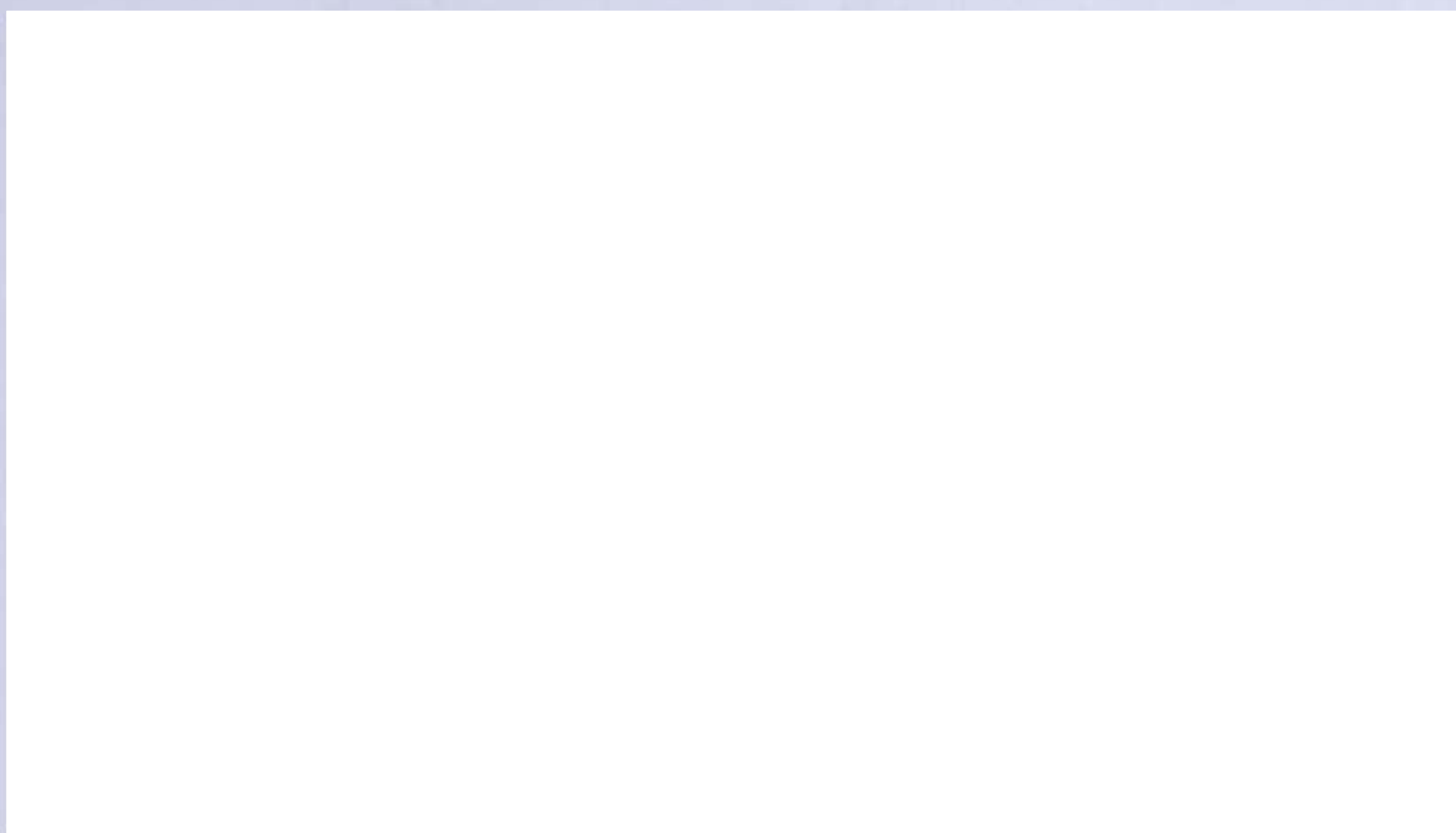
For these reasons, it is submitted that the complete communication blockade in Kashmir is illegal and unconstitutional, and the Petitioner has been constrained to approach this Hon'ble Court under Article 226 of the Constitution.

LIST OF DATES

Date	Particulars
25.07.2019	The Respondents deployed 10,000 paramilitary troops in Kashmir to purportedly strengthen counter-insurgency efforts.
01.08.2019	The Respondents deployed an additional 25,000 paramilitary troops in Kashmir.
02.08.2019	The Jammu & Kashmir Home Department issued an advisory to the Amarnath Yatra pilgrims and tourists advising them to leave the State immediately due to terror threats.
04.08.2019	Mobile internet services were suspended during the evening of 4th August 2019 in Kashmir. The Petitioner last spoke to his family members at 10.45pm.
05.08.2019	Orders issued under Section 144 of CrPC for District Srinagar to be effective from 12.00 hrs on 05.08.2019 till further orders. Broadband internet, cellular network, landline connections and Cable TV services were also suspended in the early hours of 5th August 2019. On this day, Presidential Order GSR 551(E) titled 'The Constitution (Application to Jammu and Kashmir) Order, 2019' was issued by the President of India and the Rajya Sabha passed the Jammu & Kashmir Reorganization Bill, 2019.
06.08.2019	The Lok Sabha passed the Jammu & Kashmir Reorganization Bill, 2019. Presidential Declaration GSR 562(E) was issued by the President of India. The Director General of Police of Jammu & Kashmir told the media that the situation in the State was "totally peaceful."
07.08.2019	In a news report, BSNL officials claimed that only internet services had been suspended by the company in Kashmir and there was no official suspension of landline services.

IN THE MATTER OF:

BETWEEN



PETITIONER

AND

- 1) Union of India
Represented by the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110001

RESPONDENT NO. 1

- 2) State of Jammu & Kashmir
Represented by
Chief Secretary,
R. No. 307, 3rd Floor,
Civil Secretariat,
Srinagar - 190001

RESPONDENT NO. 2

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA, 1950**

The Petitioner submits as under:

1. The address of the Petitioner for service of court notices, summons and other process is stated in the cause title. The Petitioner may also be served in these proceedings at the offices of his advocate,



The

Respondents' address for the above purpose is also stated in the cause title.

2. This Writ Petition, filed under Article 226 of the Constitution of India, seeks, among other things, the issuance of a writ / order / direction to the Respondents to

immediately restore the operation of all modes of communication in all districts of Kashmir to enable the Petitioner, and the people of Kashmir and their family and friends outside Kashmir, to exercise their rights to know, communicate and receive information under Article 14, 19(1)(a) and 21 of the Constitution of India.

3. The Petitioner's case is that the complete communication blockade by the Respondents violates his rights under Articles 14, 19(1)(a) and 21 as it is an illegal, arbitrary and disproportionate violation of fundamental rights, and hence is unconstitutional. Particularly, the communication blockade is unconstitutional because, first, it lacks any legal basis. Second, the communication blockade lacks a legitimate aim. Third, the communication blockade is an irrational method of ensuring public safety during any law and order situation, and hence lacks suitability under extraordinary circumstances. Fourth, the communication blockade is an unreasonable restriction amounting to extinguishment of right. Fifth, the communication blockade is both disproportionate and discriminatory. Sixth, there exist less restrictive alternatives.
4. The background facts against which this petition has been filed for the consideration of this Hon'ble Court are set out below.

BACKGROUND FACTS

5. The Petitioner is a student [REDACTED]. The Petitioner is originally from [REDACTED] before moving out in 2016 to pursue his higher education. The Petitioner keeps visiting his family still residing in [REDACTED]. The Petitioner's father suffers from [REDACTED], his mother has had to deal with [REDACTED] problems and his grandmother has several old age related issues. Due to the illegal and arbitrary communication shutdown, he has been left with no means to confirm the well-being and safety of his family members who suffer from various medical ailments and determine if they have adequate access to healthcare facilities.
6. The Respondent No.1 is the Union of India, through the office of the Secretary of the Ministry of Home Affairs, being the concerned authority for maintenance of law and order in the territory of India.

to purportedly strengthen counter-insurgency efforts. On 01 August 2019, additional 25,000 paramilitary troops were deployed by the Respondents in Kashmir. Copies of the news reports titled, "Centre rushes 10,000 troops to Kashmir" and "25,000 More Troops Being Moved To Kashmir, Week After 10,000-Strong Push" are annexed as **Annexure A and B**.

9. On 02 August 2019, the Civil Secretariat, Home Department, Jammu & Kashmir issued an advisory to the Amarnath Yatra pilgrims and tourists advising them to leave the State immediately due to terror threats. It stated:

"Keeping in view the latest intelligence inputs of terror threats, with specific targeting of the Amarnath Yatra, and given the prevailing security situation in the Kashmir Valley, in the interest and safety of tourists and Amarnath Yatris, it is advised that they may curtail their stay in the valley immediately and take necessary measures to return as soon as possible.

By order of the Government of Jammu and Kashmir."

A copy of the Security Advisory dated 02 August 2019 is annexed as **Annexure C**.

10. On the evening of 04 August 2019, mobile internet services were suspended in Kashmir. The Petitioner last spoke to his family members at 10.45pm on 04 August 2019. Orders were subsequently issued under Section 144 of the Code of Criminal Procedure, 1973 for the District Srinagar to be operative from 12.00 hrs. Broadband internet, cellular network, landline connections and Cable TV services were also suspended in the early hours of 05 August 2019. A copy of news report titled "Jammu and Kashmir: Internet services, landline, mobile network are down" and "Kashmir: Curfew-like restrictions imposed on movement of people" are annexed as **Annexure D and E**.
11. On 05 August 2019, the President issued Presidential Order GSR 551(E) titled 'The Constitution (Application to Jammu and Kashmir) Order, 2019'. The same day, the Rajya Sabha passed the Jammu & Kashmir Reorganization Bill, 2019.

Copies of tweets by Kashmir Zone Police and Home Affairs Ministry are annexed as **Annexure Q and R.**

20. On 13 August 2019, the Home Affairs Ministry Spokesperson went back from its earlier stated claim to say that widespread unrest did happen in Soura, Srinagar on 09 August 2019. On the same day, the Home Ministry Spokesperson claimed that situation in Jammu was restored to normalcy, but restrictions continue in Kashmir. Copy of tweets by Home Affairs Ministry Spokesperson are annexed as **Annexure S and T.**
21. On 14 August 2019, the Jammu and Kashmir Police claimed that situation continues to remain peaceful. A copy of tweet by Jammu and Kashmir Police is annexed as **Annexure U.**
22. On 15 August 2019, the Principal Secretary in the Jammu and Kashmir administration, Rohit Kansal claimed that the Independence Day celebrations were peaceful in Jammu and Kashmir. But per reports, people were not allowed to travel to SK Stadium where Governor Satya Pal Mullick unfurled the tricolour. Copies of news reports titled, "Independence Day celebrations peaceful in J&K, says top bureaucrat" and "No Kashmiri to Hear Governor's Independence Day Assurances on Safeguarding Identity" are annexed as **Annexure V and W.**

23. On 17 August 2019, per media reports, landline phone services were restored in certain parts of Kashmir. However, the Petitioner doesn't have a landline installed at his home in Kashmir and as per the Petitioner's estimate, due to widespread use of mobile phones, very few houses in Kashmir have landlines installed anymore and landline connections are largely restricted to government offices. A copy of media report titled, "Kashmir LIVE: 50,000 Phone Lines Operational in Valley, 2G Internet Restored in 5 Jammu Districts" is annexed as **Annexure X**.
24. In the above circumstances, the Petitioner is unable to communicate with his family in Kashmir due the communication blockade. As mentioned above, the Petitioner's family members suffer from various medical conditions, and it is imperative that the Petitioner be allowed to reach out to them. From the above facts, it becomes clear that there is no legitimate basis for the communication blockade given the Respondents' own statements that the situation in Kashmir is normal. Thus, given the contradictory nature of reports and statements made by the Respondents, and due to the various fundamental rights violations committed by the Respondents, the Petitioner is constrained to approach this Hon'ble Court to redress his grievance.
25. This petition is filed on the following grounds, among others which may be urged at the time of hearing, each of which are taken without prejudice to one another:

GROUND

The complete communication blockade in Kashmir violates Article 19(1)(a) and it cannot be justified as a reasonable restriction under Article 19(2)

26. The communication blockade in Kashmir has deprived the Petitioner of his right to acquire information about the well being of his family members. The right to receive information is an integral part of Article 19(1)(a) and this has been recognized by the Hon'ble Supreme Court in a catena of cases including but not limited to **PUCL v. Union of India (2003) 4 SCC 399** and **Swapnil Tripathi v. Supreme Court of India (2018) 10 SCC 639**. Denial of accurate and contemporaneous information is a matter of grave concern because even if the Petitioner's family members have suffered mistreatment, the Petitioner cannot approach constitutional courts for relief under Articles 226 or 32 because the

landline services which only allow one to one communication and cannot be used for mass mobilization. With respect to this also, there are contradictory facts in public domain as telecom provider BSNL has denied suspending landline services, though media reports suggest otherwise. Further, the communication blockade applies to all individuals, institutions and organizations except certain government officials. Per media reports, telephone connections of hospitals have also been blocked.

29. In **Shreya Singhal v. Union of India (2015) 5 SCC 1**, the Hon'ble Supreme Court has held that any restriction on freedom of speech and expression must be narrowly tailored. The relevant extract of the judgement is as follows:

"Insofar as abridgement and reasonable restrictions are concerned, both the U.S. Supreme Court and this Court have held that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary."

Therefore, the communication blockade in Kashmir does not qualify as a reasonable restriction under Article 19(2) because it is not narrowly tailored to target only those communication platforms or individuals, institutions and organizations which pose a high risk.

30. The communication blockade in Kashmir does not qualify as a reasonable restriction under Article 19(2) due to lack of any temporal limitations. In **Virendra**

v. State of Punjab 1958 SCR 308, the Hon'ble Supreme Court struck down Section 3 of Punjab Special Powers (Press) Act, 1956 because in the absence of a time limit, an order which prohibited bringing into Punjab any notified publication for an indefinite period could not be considered a reasonable restriction. The relevant portion of the Court's holding is as follows:

"Although the exercise of the powers under s. 3(1) is subject to the same condition as to the satisfaction of the State Government or its delegate as is mentioned in s.2(1)(a), there is, however, no time limit for the operation of an order made under this section nor is there any provision made for any representation being made to the State Government. The absence of these safeguards in s. 3 clearly makes its provisions unreasonable."

The communication blockade in Kashmir has continued for the last 12 days and in the absence of any legal order available in the public domain which specifies a time limit, these restrictions should be considered indefinite.

31. The communication blockade in Kashmir does not qualify as a reasonable restriction under Article 19(2) since the Respondents are obligated to use the least rights restricting alternative available. As previously stated, the Hon'ble Supreme Court in **Shreya Singhal** has held that for a restriction to be considered reasonable under Article 19(2), it must be narrowly tailored and limited to what is absolutely necessary. Further, in **KS Puttaswamy v. Union of India (2019) 1 SCC 1**, the Hon'ble Supreme Court has clarified that a restriction on fundamental rights cannot be considered necessary if there are less restrictive alternatives available. The principle of adopting the least invasive alternative has also been endorsed by the Hon'ble Supreme Court in the context of Section 144, CrPC in **In Re Ramlila Maidan Incident (2012) 5 SCC 1**. In the present case, a wholesale blockade of communication services which denies citizens access to essential facilities such as healthcare and banking cannot be considered the least restrictive alternative.

The complete communication blockade in Kashmir violates the right to life and personal liberty under Article 21

32. Every individual has the right to know about the safety of their family members especially in situations where there is risk of being denied even the basic necessities due to extraordinary situations. This right should extend to the

...happening in a democratic state – it could be seen as a new departure for many states that are thinking about how to clamp down on the flow of information.”

True copy of news report dated 16.08.2019 titled, “Kashmir Shutdown ‘Unprecedented’ For A Democracy, Says UN Freedom Of Speech Expert” is annexed herewith as **Annexure AA**. True copy of news report dated 08.08.2019 titled, “Kashmir: India’s ‘draconian’ blackout sets worrying precedent, warns UN” is annexed herewith as **Annexure AB**.

46. Faced with similar communication blockades, foreign courts have protected their citizens’ right to freedom of speech and expression. For instance in Case 21855/65 decided on 28 May 2011, the Council of State, which is the highest judicial authority for administrative law in Egypt, held that a five day long shutdown of mobile phone network and the internet was unconstitutional. The Council rejected the Egyptian Government’s contention that the communication shutdown was necessary to protect national security, and it held that social justice, economic development, human dignity and freedom are also a part of national security.

GROUND FOR INTERIM RELIEF

47. The Petitioner has a strong prima facie case in his favour and is likely to succeed before this Hon’ble Court. As submitted above, the Respondents have issued contradictory statements to the media about the state of affairs in Kashmir, thereby making it impossible to determine if there is a genuine and imminent threat to one of the protected interests warranting the infringement of the Petitioner’s fundamental rights. The Petitioner is left unaware about the nature of the order, the issuing authority, the scope and extent of the blockade, and whether

PRAYER

In light of the facts and circumstances detailed in the present writ petition as well as the legal grounds relied upon therein, it is prayed that this Hon'ble Court may be pleased to:

- A. Issue an appropriate writ in the nature of certiorari or in the nature of mandamus or any other appropriate writ, order or direction setting aside or quashing all such order(s), notice(s), direction(s) or circular(s), as the case may be, issued by either of the Respondents herein or any other authority of the State, by or under which, suspension or unavailability or shutdown of all forms of communication, including mobile connection, internet, landline connection was ordered in each district of Jammu and Kashmir, for being violative of, *inter alia*, Articles 14, 19 and 21.
- B. Issue an appropriate writ, order or direction directing the Respondents to immediately restore all modes of communication including mobile connections, landline and internet services.
- C. Issue an appropriate writ, order or direction directing the Respondents to henceforth not to resort to such unreasonable and arbitrary communication shutdowns imposed in an illegal and unconstitutional manner without due regard to the constitutionally protected fundamental rights.
- D. Issue any other writ, order or direction that this Hon'ble Court deems appropriate in the interests of justice.

INTERIM PRAYER

The Petitioner most humbly prays that pending final disposal of this Writ Petition, this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, for production of all such relevant order(s), notice(s), direction(s) or circular(s), as the case may be, issued by either of the Respondents herein or any other authority of the State, by or under which, suspension or unavailability or shutdown of all forms of communication, including mobile connection, internet, landline connection was ordered in each district of Jammu and Kashmir.

Bangalore

Dated:

Advocate for the Petitioner

Address for Service: