

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(ORDER XXXVIII, S.C.R, 2013)

WRIT PETITION (CIVIL) NO OF 2020

[A Writ Petition under Article 32 of the Constitution of India read with order XXXVIII, Rules 1 & 2 of Supreme Court Rules, 2013]

IN THE MATTER OF:

EHTESHAM HASHMI & ORS

...PETITIONERS

Vs

UNION OF INDIA

...RESPONDENT

[PAPER BOOK]

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ADVOCATE FOR THE PETITIONER : AKBAR SIDDIQUE

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SYNOPSIS

The present Writ Petition is being filed by the Petitioners assailing the arbitrary act of the Respondent on imposing suspension and shutdown of Internet and Communication services across the country. The abovementioned act of the respondent has raised serious doubt over the intentions of the government and its instrumentalities in adhering to the Constitution of India and provisions of the Constitution; the act of the respondent is against the Fundamental rights safeguarded by Article 19 and 21 of the Constitution of India.

It has been time and again established by this Hon'ble Court that Constitution stands above all and every action of any form of government its instrumentalities and agency, it cannot infringe on the Fundamental Rights guaranteed by the constitution of India to its citizens. Freedom of speech can be restricted only in the interest of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to the contempt of Court, defamation or incitement to an offence.

That internet in today's age is the greatest technological advancement and agent of economic and social change, internet has become basic necessity for the people and it has

revolutionised and transformed the life of people and has become nearly impossible to imagine life without it in today's digital era. India has the second largest user base of internet in the world with 665.31 million users at the end of June 2019 out of which 96% of the user access internet through mobile phones.

Internet shutdown is a government's imposed disablement of access to internet over a period of time over a particular location by the service provider. Internet shutdown restricts the freedom of an individual to seek, receive and impart ideas and information of all kinds. Internet shutdown and suspension of communication services restricts an individual's right to voice its opinion and receive information, without access to information freedom of speech and expression is meaningless. It not only restricts freedom of speech and expression but also other ancillary rights flowing from it. The acts of suspending and shutting down internet services is wholly arbitrary in nature, unreasonable, unjust and is in violation of freedom of speech and expression guaranteed by the constitution of India, freedom of speech and expression is the first condition of liberty. Freedom of speech and expression as already been reiterated by the Hon'ble Supreme Court is indispensable for the development of

one's own individuality and for the success of parliamentary democracy.

The Hon'ble Supreme Court in *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011 : (1997) 6 SCC 241 has held that:

"in the light of Article 51(c) and 253 of the Constitution of India and the role of judiciary envisaged in the Beijing Statement, the international conventions and norms are to be read into the Fundamental rights guaranteed in the Constitution of India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them."

The Hon'ble Supreme Court in *Faheema Shirin.R.K vs State Of Kerala*, W.P(C).No.19716/2019-L held 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."

That India has the maximum number of internet shutdowns in the world in comparison to all other countries. Between

January 2012 and April 2018, India has recorded 172 shutdowns across 19 states, duration of the shutdown varying in range from less than 24 hours to more than 72 hours, mode of restriction included restrictions on mobile, fixed line both the modes of connecting to Internet services. There have been more than 100 instances of Internet Shutdowns in the year 2019. The Right to access internet is a Fundamental right under Right to Education and Right to Privacy under article 21 of the Constitution of India. Suspension and shutdown of the internet and communication services is infringement of the freedom and rights guaranteed and safeguarded under article 19 and 21 of the Constitution of India.

That the Citizenship (Amendment) Act, 2019 was passed by the Lok Sabha and Rajya Sabha and the president gave his assent and signed the bill on 12.12.2019. This Act of the Parliament has received severe criticism from student fraternity, legal fraternity, social activists and other public spirited people across the country and globally from United Nations and other international bodies. In wake of the act there have been several protests in various parts of the country against the Citizenship (Amendment) Act, 2019 as violation of the basic structure of the

Constitution of India. In light of the above circumstances section 144 have been imposed in various parts of the country and Internet and Communication services in various part of the country has been suspended and shutdown.

That the Hon'ble Suoreme Court in *Anuradha Bhasin v Union of India & Ors*, W.P(C). No. 1031 of 2019 and *Ghulam Nabi Azad v Union of India & Anr*, W.P(C). No 1164 of 2019 held that:

"We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality."

The Hon'ble Supreme Court in *Indibly Creative Pvt. Ltd. Vs Govt. Of West*, Writ Petition (Civil) No 306 of 2019 has held that:

"The police are not in a free society the self-appointed guardians of public morality. The uniformed authority of their force is subject to the rule of law. They cannot arrogate to themselves the authority to be willing allies in the suppression of dissent and obstruction of speech and expression."

LIST OF DATES AND EVENTS

26 .01.2012	Earliest instance of Internet shutdown that was reported was
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	shutting down mobile Internet services in the Kashmir valley as part of a broader telecommunications clampdown on the occasion of Republic day.
8.07.2016	Internet Shutdown over 100 days was observed in Kashmir located in state of Jammu and Kashmir.
18.06.2017	Third longest Internet services suspension was observed in Darjeeling.
04.08.2019	Internet shutdown was imposed in the erstwhile state of Jammu & Kashmir it is the longest shutdown in the history and it is still in force.
8.11.2019	In Aligarh, internet services were shut down for 24 hours, ban was imposed under Section 144 of the CrPC.
10.12.2019	In the state of Tripura Internet services were snapped for 48 hours.

11.12.2019	Internet services were suspended in the state of Assam.
12.12.2019	Citizenship (Amendment) Act, 2019 was passed in parliament and president gave his assent.
16.12.2019	Internet Services were suspended in 6 districts of State of West Bengal.
19.12.2019	Communication services including, voice, SMS and internet were suspended in five parts in the capital city New Delhi.
19.12.2019	That Section 144 of the Criminal Procedure Code was imposed in the state of Uttar Pradesh. Internet Services were shut down on the order of Home Department in some districts of State of Karnataka.
20.12.2019	Internet and communication services on mobile phones were suspended in around 18 districts within the State of Uttar Pradesh.

21.12.2019	Internet Services remained suspended in Indore, Bhopal and Jabalpur cities of State of Madhya Pradesh
22.12.2019	Internet Services were suspended in Jaipur in the state of Rajasthan.
26.12.2019	Internet and communication services on mobile phones were again suspended in several districts of the state of Uttar Pradesh
	Hence the Present Writ Petition

IN THE HON'BLE SUPREME COURT OF INDIA

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UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WRIT PETITION (CIVIL) NO OF 2020

IN THE MATTER OF:

EHTESHAM HASHMI & ORS.

...PETITIONERS

Vs

UNION OF INDIA

...RESPONDENT

IN THE MATTER OF:

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...PETITIONERS

VERSUS

1) Union of India,

Ministry of Law & Justice

Through Secretary

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... Respondent

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING A WRIT OR ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DECLARING THE SHUTDOWN OF

INTERNET SERVICES AS ILLEGAL, UNCONSTITUTIONAL FOR BEING IN VIOLATION OF ARTICLE 19 & 21 OF THE CONSTITUTION OF INDIA, AND FRAMING GUIDELINES FOR IMPOSITION OF INTERNET SHUTDOWN TO BE IN CONSONANCE OF CONSTITUTION OF INDIA AND TO PASS SUCH FURTHER ORDERS AS THIS HON'BLE COURT MAY DEEM APPROPRIATE TO PROTECT LIFE, PERSONAL LIBERTY AND DIGNITY OF THE PEOPLE.

To,

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the present Writ petition is preferred under Article 32 of the Constitution of India seeking a Writ or order or direction in the nature of mandamus declaring the shutdown of internet services as Illegal and unconstitutional and being in violation of Article 19 & 21 of

The Constitution of India and framing guidelines for internet shutdown in consonance of Constitution of India and to pass such further orders as this Hon'ble Court may deem appropriate to protect the lives, personal liberty and dignity of the people of this country. This petition is filed by the petitioner in his individual capacity.

1A. That the details of the petitioners filing the present Public Interest Litigation are as follows:-

a) Petitioner No. 1 is a lawyer practising in the Hon'ble Supreme Court of India, Delhi High Court and various other Courts across the country and is well versed with the law of the country. The petitioner No. 1 has been involved with social work and legal aid societies in the past and understands his moral duty towards the citizens of this country. The present petitioner is not having any personal interest in the present petition and the present petition is solely for the purpose of public interest as facility of internet is integral part of Constitution of India under Article 19.

1B. The Internet Shutdown itself is unconstitutional in nature and violates Fundamental rights as enshrined under Article 19 & 21. Cause of Action of the present petition is

that Internet shutdown by the government and its instrumentalities across various parts of the country violates Fundamental rights guaranteed under Article 19 & 21.

1C.The nature of injury is that it restricts and deny the public right to access the internet and enjoy the Fundamental right guaranteed under Article 19 & 21 and other rights flowing from it. It would fail the people to enjoy their Constitutional mandate.

FACTS OF THE CASE

2. That the present petition has been filed by the petitioner against the respondent for the infringement of Fundamental rights exercised by the respondent arbitrarily by imposing suspension and shutdown of Internet and Communication services across the country. That the act of the respondent is against the freedom and Fundamental rights guaranteed and safeguarded by Article 19 and 21 of the Constitution of India. This act of respondent has raised serious doubt over the intentions of the government and its instrumentalities in adhering to the provisions of the Constitution of India.

3. That the Citizenship (Amendment) Act, 2019 was passed by the Lok Sabha on 9.11.2019 and Rajya Sabha where the bill was passed by majority on 11.12.2019. The president gave his assent and signed the bill on 12.12.2019. This act of the parliament has received severe criticism in the country from student fraternity, legal fraternity, social activists and other public spirited people and globally from United Nations and other international bodies. In wake of the act there have been several protests in various parts of the country as violation of the basic structure of the Constitution of India. In Light of the above circumstances Section 144 CrPC was then imposed in various parts of the country which eventually led to the suspension of Internet and Communication services.
4. That internet in today's age is the greatest technological advancement and agent of economic and social change, internet is a basic necessity for people and it has revolutionised and transformed the life of people and has become nearly impossible to imagine life without it in today's digital age. Right to access internet is a Fundamental right under Right to Education and Right to

Privacy under article 21 of the Constitution of India. Suspension and shutdown of the internet and communication services is clearly an infringement of freedom and rights guaranteed and safeguarded under article 19 and 21 of the Constitution of India.

5. That India has the maximum number of internet shutdowns in the world. Between January 2012 and April 2018, around 19 Indian states recorded 172 shutdowns. Duration of the shutdown varying in range from less than 24 hours to more than 72 hours, mode of restriction included restrictions on mobile, fixed line both the modes of connecting to Internet services as reported in "**Living in Digital Darkness**", a Handbook on Internet Shutdown in India report documented by SFLC more than 100 instances of Internet Shutdown in 2019.
6. That India is the second highest Internet user in the world, with total number of internet subscribers 665.31 million at the end of June 2019, with number of Wired Internet subscribers are 21.67 million and number of Wireless Internet subscribers are 643.64 million. In India among the internet subscribers, 96.66% subscribers are using Mobile

devices for access of internet services according to the Indian Telecom Services Performance Indicators April – June, 2019 by Telecom Regularity Authority of India.

7. That the Centre for Technology Innovation in its report found out that the estimated costs of internet shutdown between 1st July, 2015 to 30th June 2016 for India was \$968,080,702. India faced the highest losses due to internet shutdowns when compared to 18 countries which shut its internet during that same period. The Indian Council for Research on International Economic Relations in a study revealed that India has faced a loss of 3044 (USD Million) from the years 2012-2017, in which the 2015 internet shutdown in Gujarat hurt the economy, costing it 1129 (USD Million). A report by Deloitte titled 'the economic impact of disruptions to Internet connectivity' stated that a medium-connectivity country faced \$ 6.6 million loss to the average GDP impact per 10 million people per day.
8. That internet shutdown was imposed on 04.08.2019, when Article 370 of the Constitution was abrogated by the Parliament of India. The State of Jammu and Kashmir was bifurcated into the Union Territories of Jammu & Kashmir

and Ladakh. The beginning of the communication blockade saw landlines as well as Mobile services restricted, the ban on landlines was lifted but suspension of mobile internet continues in the valley. Present Internet and Communication Blockade in the Union Territories of Jammu & Kashmir is the longest in the history of internet shutdown in the world. Similarly, Kargil District of Ladakh faced a shutdown of 145 days which was imposed since 4.08.2019 on the erstwhile State of Jammu and Kashmir. The shutdown was imposed alongside the suspension of all landline, mobile and SMS communication as a preventive measure in the wake of the abrogation of Article 370. It was lifted on 27.12.2019 in the district. Internet Shutdown for over 100 days was observed in Kashmir in the state of Jammu and Kashmir in 2016 due to the agitation caused by the killing of Burhan Wani on 8.07.2016. Mobile Internet Services were suspended for 133 days. While mobile Internet service on postpaid numbers was restored on 19.11.2016. Mobile Internet service for prepaid users was resumed in January 2017. Third longest Internet services suspension was observed in Darjeeling. The order

suspending the Internet services was promulgated on 18.06.2017 due to the ongoing agitation for a separate Gorkhaland. Two days later, on 20.06.2017, the order was extended to the broadband services as well, effectively shutting down the entire Internet, with several such extension orders Internet services were also suspended in Darjeeling for 100 days.

9. That internet shutdown by police official and ban on internet services under section 144 of Criminal Procedure Code is *ultra vires*, In Aligarh, internet services were shut for 24 hours, starting from midnight 8.11.2019, on the orders of the Aligarh District Magistrate, ban was imposed under Section 144 of the CrPC, and not by the Home secretary of Uttar Pradesh, as required under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 under the Telegraph Act, 1885. The true Copy of Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 is marked and annexed as **ANNEXURE- P/1.**

10. That internet services were suspended in state of Assam on 11.12.2019, amidst widespread protests against the passage of the Citizenship Amendment Bill. The affected districts were Lakhimpur, Dhemaji, Tinsukia, Dibrugarh, Charaideo, Sivasagar, Jorhat, Golaghat, Kamrup, and Kamrup Metro. The internet shutdown was initially ordered only for 48 hours, after which it was extended by another 48 hours till December 14. However, mobile internet services were only restored after 10 days of shutdown on 20.12.2019, on the order of the Hon'ble Gauhati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh). Internet services were suspended in the entire state of Meghalaya for 48 hours on 12.12.2019, amidst protests against the Citizenship Amendment Act. In state of Tripura Internet services were snapped for 48 hours on 10.12.2019 as protests against the then Citizenship Amendment Bill, 2019, this shutdown was extended by another 24 hours on December 12.12.2019.
11. That communication services including, voice, sms and internet was suspended in on 19.12.2019 in five parts

of the capital city New Delhi including Walled areas of North and Central District, Mandi House, Bawana, Jamia Nagar and Shaheen Bagh, Mustafabad, Saleempur and Jaffarabad amid anti Citizenship Amendment Act and National Register of Citizens protests.

12. That Section 144 of Criminal Procedure Code was imposed in the State of Uttar Pradesh on 19.12.2019 and subsequently Internet and communication services on mobile phones were suspended in 18 districts of Uttar Pradesh from a 20.12.2019 to 21.12.2019 in Hapur, Moradabad, Saharanpur, Shamli, Muzzafarpur, Meerut, Lucknow, Prayagraj, Azamgarh, Bulandshahar, Ghaziabad, Kanpur, Unnao, Agra, Sultanpur, Mau, Bagpat and Pilibhit and again were suspended on 26.12.2019 in district of Western Uttar Pradesh including Bijnor, Bulandshahar, Muzzafarnagar, Meerut, Agra, Bareilly, Hapur, Shamli, Saharanpur, Firozabad, Ghaziabad, Sitapur, Rampur, Kanpur, Aligarh, Sambhal, Azamgarh, Moradabad, Bahraich and Amroha suspension was ordered for different durations across these district, some districts didn't have internet

services restored till 28.12.2019 amidst anti Citizenship Amendment Act and National Register of Citizens protests.

13. That in order to prevent the respondent from going against the Constitution and enacting the Act, the Petitioner is left with no other alternative remedy except to invoke the extra ordinary jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India, on the following grounds amongst other:

GROUND:

A. BECAUSE the acts of suspending and shutting down internet services is arbitrary in nature, unreasonable and are in violation of freedom of speech and expression guaranteed by the constitution of India, freedom of speech and expression is the first condition of liberty. Article 19(1)(a) of the constitution of India gives all citizens right to Freedom of Speech and Expression and it include Freedom to express opinion and idea without disturbance and threat of sanctions,

the right to impart, obtain and publish news and information and the right to be informed. Freedom of speech and expression as already been reiterated by the Hon'ble Supreme Court is indispensable for the development of the one's own individuality and for the success of parliamentary democracy. Internet shutdown is a government imposed disablement of access to internet over a period of time over a particular location by the service provider. Internet shutdown restricts the freedom of an individual to seek, receive and impart ideas and information of all kinds. Internet shutdown and suspension of communication services restricts an individual's right to voice its opinion and receive information, without access to information freedom of speech and expression is meaningless. It not only restricts freedom of speech and expression but other ancillary rights flowing from it. Internet shutdown is a disruption of internet services by the government is violation of 2016, United Nations Human Rights Council's Resolution, resolution reaffirmed that the

same right people have offline must also be protected online.

B. BECAUSE the mode of restriction of internet shutdown is on both access of internet through mobile phones and access of internet through fixed line broadband, majority of user access internet through mobile in comparison to the number of users by fixed line broadband and wired internet. Thus shutdown of internet services on both mobile and broadband is a restriction on the freedom of right to access internet and it is a Fundamental human right. Restricting and denying access to internet by the government is a breach of article 19 of the International Covenant on Civil and Political Rights. In the reports of the Special Reporter of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted to the Human Rights Council at its seventeenth, twenty-third, twenty-ninth and thirty-second sessions, and to the General Assembly at its sixty-sixth session, on freedom of expression on the Internet, and taking note of the report of the

Special Rapporteur on the right to privacy, submitted to the Human Rights Council at its thirty-first session;

- i. Affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
- ii. Recognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals;
- iii. Calls upon all states to promote and facilitate international cooperation aimed at the development of media

and information and communication facilities and technologies in all countries;

- iv. Affirms that quality education plays a decisive role in development, and therefore calls upon all States to promote digital literacy and to facilitate access to information on the Internet, which can be an important tool in facilitating the promotion of the right to education;
- v. Affirms also the importance of applying a human rights-based approach in providing and in expanding access to Internet and requests all States to make efforts to bridge the many forms of digital divides;
- vi. Calls upon all States to bridge the gender digital divide and enhance the use of enabling technology, in

particular information and communications technology, to promote the empowerment of all women and girls;

- vii. Encourages all States to take appropriate measures to promote, with the participation of persons with disabilities, the design, development, production and distribution of information and communications technologies and systems, including assistive and adaptive technologies, that are accessible to persons with disabilities;
- viii. Calls upon all States to address security concerns on the Internet in accordance with their international human rights obligations to ensure protection of freedom of expression, freedom of association, privacy and other human rights online, including

through national democratic, transparent institutions, based on the rule of law, in a way that ensures freedom and security on the Internet so that it can continue to be a vibrant force that generates economic, social and cultural development;

- ix. Condemns unequivocally all human rights violations and abuses, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, expulsion, intimidation and harassment, as well as gender based violence, committed against persons for exercising their human rights and fundamental freedoms on the Internet, and calls on all States to ensure accountability in this regard;
- x. Condemns 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;

- xi. Stresses the importance of combating advocacy of hatred that constitutes incitement to discrimination or violence on the Internet, including by promoting tolerance and dialogue;
- xii. Calls upon all States to consider formulating, through transparent and inclusive processes with all stakeholders, and adopting national Internet-related public policies that have the objective of universal access and enjoyment of human rights at their core;
- xiii. Requests the High Commissioner to prepare a report on ways to bridge the gender digital divide from a

human rights perspective, in consultation with States, the special procedures of the Human Rights Council, international organizations, national human rights institutions, civil society, industry, technical community and academia and other stakeholders, and to submit it to the Human Rights Council at its thirty-fifth session;

- xiv. Encourages the special procedures to take these issues into account within their existing mandates, as applicable;
- xv. Decides to continue its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and other information and communication technology, as well as of how the Internet can be an

important tool for fostering citizen and civil society participation, for the realization of development in every community and for exercising human rights, in accordance with its programme of work.

True Copy of Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue is marked and annexed as **ANNEXURE-P/2** and True Copy of Resolution The promotion, protection and enjoyment of human right on the Internet **ANNEXURE-P/3**.

C. The Hon'ble Supreme Court in *Vishakha & Ors. Vs. State of Rajasthan & Ors.*, AIR 1997 SC 3011 : (1997) 6 SCC 241 has held that:

"in the light of Article 51(c) and 253 of the Constitution of India and the role of judiciary envisaged in the Beijing Statement, the international conventions and norms are to be read into the Fundamental rights guaranteed in the Constitution of

India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them.”

Internet is a vital educational tool and shutting it down is the violation of an individual's right to education as it restricts him/her to access to vast and expanding source of knowledge available online, courses, reading material and scholarly researches available on the internet, restriction on right to access internet through mobile right to privacy.

D. The Hon'ble Supreme Court in *Faheema Shirin.R.K vs State Of Kerala*, W.P(C).No.19716/2019-L held 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.” Internet enables students to access to acquire quality education and knowledge from around the globe and all available sources as it give access to plethora of platforms. Suspension of internet is an

unreasonable restriction on the Fundamental right. In the digital age and era of digitization a major chunk of countries economy is dependent on the internet as the business, e-commerce, start-ups, corporate and finances use internet services for transaction and affairs of businesses. The various platforms for online payment are enabled by internet for payment of bills, fee etcetera. It all factors in the economy of the country and with internet shutdown effects the trade and business resulting in huge loss in economy of the nation. Internet shutdown is in violation of right to get livelihood, during the internet shutdown an individual is not able to earn his daily bread whose livelihood because of in this digital age is affected by internet.

E. The Hon'ble Supreme Court in the case of *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*, (1992) 3 SCC 637 held:-

"Every citizen of this free country, therefore, has the right to air his or

her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy.”

“Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be said that modern communication mediums advances public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the

same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution..."

F. BECAUSE the freedom of speech and expression under Article 19(1)(a) guaranteed by the constitution of India can only be restricted by the reasonable restrictions mentioned under clause(2) of Article 19. Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The Hon'ble Supreme Court in *Chintaman Rao v. State of Madhya Pradesh*, AIR 1951 SC 118 held that:

"7. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates.

Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

G. The Hon'ble Supreme Court in *Mohd. Faruk v. State of Madhya Pradesh & Ors.*, [1970] 1 S.C.R. 156, this Court said:

"The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the Fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its

capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local-or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.”

H. BECAUSE Internet shutdown is a violation of the freedom guaranteed under article 19 of the Constitution of India. There is internet shutdown amid the anti Citizenship Amendment Act and National Register of Citizens protest in various part of the country after the imposition of section 144 of the criminal procedure code in the affected location by the police officials, which is in violation of freedom of speech and expression as it is to restrict the

expression and dissent of the citizens and violation of others also who needs to access internet for other information. The act of internet shutdown has cut of communication of people from a particular place with the rest of the world and country.

- I. BECAUSE The internet shut down by police officials is *ultra vires*, The underlying logic is that breaches of public order, or the triggering of violence, can be prevented if people are stopped from gathering is vague and illogical it is state's obligation to ensure that adequate security arrangements are in place in times of dissent and political unrest and less drastic restraint are put rather than arbitrary shutdown of internet and communication services. The Hon'ble Supreme Court in *S. Rangarajan Etc vs P. Jagjivan Ram*, 1989 SCR (2) 204 observed that:

"We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under

Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."

J. Because the Hon'ble Suoreme Court in *Anuradha Bhasin v Union of India & Ors*, W.P(C). No. 1031 of 2019 and *Ghulam Nabi Azad v Union of India & Anr*, W.P(C). No 1164 of 2019 held that:

"We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction

upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.”

K. BECAUSE the act of internet shutdown is not only an infringement of Fundamental rights but also a pernicious act to curb dissent in the garb of maintaining public order by the government and police official. The Hon’ble Supreme Court in *Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Ors*, SUO MOTU W.P. (CRL.) NO. 122 OF 2011

“The distinction between ‘public order’ and ‘law and order’ is a fine one, but nevertheless clear. A restriction imposed with ‘law and order’ in mind would be least intruding into the guaranteed freedom while ‘public order’ may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, ‘security of the state’ is the

paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of 'public order' and 'law and order'. However stringent may these restrictions be, they must stand the test of 'reasonability'. The State would have to satisfy the Court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution."

L. BECAUSE The Hon'ble Supreme Court in *Indibily Creative Pvt. Ltd. vs Govt. Of West, W. P(C). No 306 of 2019* has held that:-

"The police are not in a free society the self-appointed guardians of public morality. The uniformed authority of their force is subject to the rule of law. They cannot arrogate to themselves the authority to be willing allies in the suppression of dissent and

obstruction of speech and expression." Internet shutdown the act in its manifest is against the public order and tranquillity as it creates the instance of unrest, agitation, frustration and brings the general life of its users and citizens to standstill as people are not able to enjoy their right in their maximum capacity. It amounts to hijacking of the freedom guaranteed by the Constitution of India".

M. BECASUE The Hon'ble Supreme Court in concluded S. *Rangarajan Etc vs P. Jagjivan Ram*, 1989 SCR (2) 204 observed that the freedom of speech and expression could be restricted only under the limited circumstances in Article 19(2):

"Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom, by an intolerant group of people. The Fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Articles

19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

- 14.** That the Petitioner is left with no alternative remedy except to approach this Hon'ble Court by way of filing this present Writ Petition under Articles 32 of the Constitution of India.
- 15.** That this Hon'ble Court has the jurisdiction to entertain the present petition, as this Hon'ble Court has extra ordinary power of judicial review of the acts passed by the Parliament.
- 16.** That the petitioners have no personal interest in the present petition.
- 17.** That the petitioners have no civil, criminal or revenue litigation which has or could in future have a legal nexus with the issues involved in Public Interest Litigation.

18. That the present Petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.
19. That the present petitioner has not moved any other government body or authority for the relief prayed in the present Writ petition.
20. That the Annexures attached with the present Petition are true copies of their respective originals.
21. That the present Petition is being filed in the most bona fide manner, as advised under law.
22. That the petitioner has not filed any other similar petition before this Hon'ble Court or any other Courts for the similar relief.
23. That the petitioner will bear the costs of the petition if this Hon'ble Court directs any imposition of costs in this regard.

PRAYER:

In view of the abovementioned facts and circumstances and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue an appropriate Writ, order or direction in the nature of Mandamus declaring Internet Shutdowns as unconstitutional and in violation of Article 19 & 21 of the Constitution of India and hence unconstitutional, illegal and unenforceable or;
- (b) Issue guidelines to prevent the unreasonable and arbitrary Internet Shutdown under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.
- (c) Pass any such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case;

**AND FOR THIS ACT OF KINDNESS THE PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY**

Date

Place

Through

(AKBAR SIDDIQUE)

WWW.LIVELAW.IN

Advocate on Record

C-15, BASEMENT, NIZAMUDDIN EAST

DELHI-110013

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO OF 2020

IN THE MATTER OF:

EHTESHAM HASHMI & ORS

...PETITIONERS

Vs

UNION OF INDIA

...RESPONDENT

AFFIDAVIT

I, Ehtesham Hashmi, S/o M.S. Hashmi, aged about 36 years, R/o A-28, Jangpura B, New Delhi-110013, do hereby solemnly affirm and state on oath as follows:

- 1.** I am one of the petitioners in the above matter and I am fully conversant with the facts and circumstances of the case and competent to swear the present affidavit.
- 2.** I have read and understood the contents of the accompanying Writ petition Synopsis and List of Dates from Page No. ____ to ____ and also the accompanying Writ petition (page No. ____ to ____) which have been drafted

under my instructions and I say that the contents of the same are true and correct.

3. That I/Petitioner has no personal interest in the litigation and neither myself nor anybody in whom I am/is interested would in any manner benefit from the relief sought in the present litigation save as a member of the general public. This petition is not guided by self gain or gain of any person, institution. Body and there is no motive other than of public interest in filing this petition.
4. I say that the contents of the petition are based through the knowledge derived by various newspapers and from personal sources of the petitioner.
5. I say that the Annexure-P/1, Annexure-P/2 and Annexure-P/3 annexed with the petition is true and copy of its original.

DEPONENT

VERIFICATION

Verified at _____ on this _____ day of _____, 2020 that the contents of the para ___ to ___ of this affidavit are true to correct

to my knowledge and belief and nothing material has been concealed there from.

DEPONENT