

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

Foundation for Media Professionals



...PETITIONER

VERSUS

1. Union Territory of Jammu & Kashmir

Home Department
Through its Principal Secretary
Room No. 307, 3rd Floor
Civil Secretariat
Srinagar - 190001

...RESPONDENT NO. 1

2. Union of India

Ministry of Home Affairs,
Through its Secretary,
North Block,
New Delhi – 110 001

...RESPONDENT NO. 2

**A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA PRAYING FOR AN APPROPRIATE WRIT OR
DIRECTION FOR THE RESTORATION OF 4G MOBILE
INTERNET SERVICES IN JAMMU AND KASHMIR**

To,

The Hon'ble Chief Justice of India

and His Companion Judges of

the Hon'ble Supreme Court of India



The Humble Petition of the

Petitioner above named

MOST RESPECTFULLY SHOWETH

1. The Petitioner Society, a not for profit organisation established in 2008, is constrained to file the present petition in these extraordinary times when the number of cases of Coronavirus Disease ("**COVID-19**") in Jammu & Kashmir has already reached 38 with 2 reported deaths, and there is genuine fear of rapid increase and community transmission in the Union Territory. By way of the present Petition, the Petitioner seeks to challenge Order No. Home-21(TSTS) of 2020

dated 26.03.2020 [**“impugned order”**], which has been passed by Respondent No. 1, *inter alia*, restricting internet speed in mobile data services to 2G only, and providing internet connectivity only with Mac-binding, for being violative of Articles 14, 19, 21, and 21A of the Constitution of India. The Petitioner additionally seeks directions from this Hon’ble Court to direct Respondent No. 1 to restore the internet speed in mobile data services in Jammu & Kashmir to 4G, in line with the rest of the country, in light of the prevailing COVID-19 epidemic. True typed Copy of the Order No. Home-21(TSTS) of A 2020 A B dated 26.03.2020 issued by Respondent No. 1 is annexed herewith as **ANNEXURE P-1** at **page nos. 59 to 61**.

ARRAY OF PARTIES

- 2.** The Petitioner Society is a not-for-profit organisation set up on 25 April 2008 under the Societies Registration Act, 1860, bearing the Registration Number S62029/200. The Petitioner-Society is engaged *inter alia* in activities to expand the freedom of the media, and to provide inputs on legislation on matters affecting the news media either directly or indirectly and to make appropriate representations to Parliament, and other institutions and organisations at all levels of

government and public life. The Petitioner-Society's founding members include eminent journalists, namely, Amitabh Thakur, Aniruddha Bahal, Ashutosh, Madhu Trehan, Manoj Mitta, S Srinivasan, Sanjay Pugalia, Sanjay Salil, Shashi Shekhar, Vineet Narain and Vivian Fernandes.

A true copy of the registration certificate of the Petitioner Society bearing Registration Number S62029/2008 dated 25.04.2008 is annexed herewith as **ANNEXURE P-2 at pgs 62**. A true copy of the Memorandum of Association and rules and regulations of the Petitioner Society is annexed herewith as **ANNEXURE P-3 at pgs 63 to 85**. The Petitioner's society's registered address is

Annexure P-4 at pgs 85.

3. The governing body of the Petitioner Society as on date has the following composition.

President:	Manoj	Mitta
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Director: Revati Laul

Governing Body Members: Paranjay Guha Thakurta, Vipul Mudgal, Samrat Choudhury, Raksha Kumar, Vivian Fernandes, S. Srinivasan, and Aniruddha Baha.

A true copy of the resolution dated 27.03.2020 passed by the Governing Body appointing Paranjay Guha Thakurta as the authorized representative of the Petitioner Society is annexed herewith as **ANNEXURE**

P-5 at page nos. 87.

4. It is submitted with utmost humility that the Petitioner Society was established to protect journalists and advance the freedom of the press, and it has responsibly engaged with the government and courts on this issue. Notably, the Petitioner Society had previously filed W.P. (Crl) No. 106 of 2015 before this Hon'ble Court challenging criminalization of defamation through Sections 499 and 500 of the Indian Penal Code, 1860 and Sections 199(1) and 199(2) of the Code of Criminal Procedure, 1973 as being contrary to the fundamental rights of journalists under Articles 14, 19 and 21 of the Constitution of India.
5. The Petitioner Society filed an Application for Intervention/Impleadment, IA No. 139555/2019 in the

matter, *Anuradha Bhasin v Union of India*, W.P. (C) No. 1031/2019 which was taken on record by this Hon'ble Court vide order dated 01.10.2019, while granting liberty to the Petitioner to file additional documents in support of its Application. In the final judgment, *Anuradha Bhasin v Union of India & Ors*, (2020) SCC Online SC 25 ("**Anuradha Bhasin**"), this Hon'ble Court was pleased to take note and consider the submissions of the Counsel for the Petitioner. The Petitioner is filing the present petition as an extension of its previous intervention. A True Copy of the order dated 01.10.2019 passed by this Hon'ble Court in W.P. (C) No. 1031/19 is annexed herewith as **ANNEXURE P-6** at page nos. **88 to 90**. A true copy of judgment, *Anuradha Bhasin v Union of India & Ors*, (2020) SCC Online SC 25, is annexed herewith as **ANNEXURE P-7** at page nos. **91 to 136**.

6. The Petitioner society does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest.
7. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.

It is hereby disclosed that the Petitioner filed an intervention application (IA 139555 of 2019) in *Anuradha Bhasin v. Union of India*, WP (C) No. 1031/2019 as mentioned above.

8. Respondent No. 1 is Union Territory of Jammu and Kashmir, through the office of the Principal Secretary, being the appropriate government in-charge of law and order in Jammu and Kashmir. Respondent No. 1 has passed all the orders pertaining to the temporary suspension of telecom services in Jammu & Kashmir, including the impugned order.
9. Respondent No. 2 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. Respondent No. 2 has also passed Order No. 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005 directing the Ministries and Department at the Centre, State, and Union Territory level to take effective measures to prevent the spread of COVID-19 in the country, and containing guidelines for the lockdown of the country.
10. The Petitioner has not approached the Respondents herein in for the reliefs prayed for in this Petition as

they are in the nature that can only be given by a constitutional court such as this Hon'ble Court.

11. It is pertinent to note that the Petitioner-Society has previously made two representations to the Respondents through its Director, Ms. Revati Laul. In its representation dated 27.03.2020, the Petitioner Society urged Respondent No. 1 to restore 4G services in Jammu and Kashmir and highlighted the impact of the internet slowdown on doctors, journalists and ordinary residents of the region during the COVID 19 crisis. The Petitioner Society had also previously written to the Respondents on 30.01.2020 about the legal and technical problems associated with whitelisting of selective websites. A True copy of representation dated 30.01.2020 is annexed herewith as **ANNEXURE P-8 at** page nos. **137 to 142**. A True copy of representation dated 27.03.2020 are is annexed herewith as **ANNEXURE P-9 at** page nos. **143 to 146**.
12. This Hon'ble Court vide judgment dated 10.01.2020 in *Anuradha Bhasin v Union of India*, W.P. (C) No. 1031/2019 ("**Anuradha Bhasin**"), while considering the internet shut-down, then in force across Jammu & Kashmir,
 - a) *held* that access to information and the

freedom of trade and commerce *via* the internet is a fundamental right under the Indian Constitution,

b) *clarified* that the necessity and proportionality standards apply to suspension or restriction of internet services, and

c) *directed* the Respondents to review orders issued under the Temporary Telecom Suspension (Public Emergency or Public Safety) Rules, 2017 (**“Telecom Suspension Rules 2017”**) in accordance with the proportionality standard.

d) Further, the Respondents were directed to publish all orders issued under these Rules and it was held that telecommunication services cannot be suspended indefinitely.

Pursuant to this judgment, Respondent No. 1 has passed various orders, including the impugned order, whereby the restrictions on internet access have gradually been lifted in the Union Territory of Jammu & Kashmir, but are still not at par with the rest of the country.

13. It is respectfully submitted that the advent of the COVID-19 global pandemic has fundamentally altered the existing situation. At present, the following facts

exist:

- a) COVID-19 exists in India, and is a highly infectious and communicable disease. Research into its origins and the best ways of tackling this disease is ongoing, and there is a continuing flow of new information about how best to contain the fall out of the virus, and limit its spread and impact; much of this information exists on the internet, in the form of instructional and informative videos, new clippings, graphs, and so on.
- b) In response to the pandemic, all state governments, Union Territories, and the central government have declared “lock-downs”, requiring people to confine themselves to their homes, and minimise physical and social contact with others; and for businesses and commercial establishments to close down, at least till 15.04.2020.
- c) It is respectfully submitted that in these conditions - a pandemic and a lock-down - the restriction of mobile internet speeds to 2G only is completely unreasonable. An effective and functional internet constitutes an essential infrastructure for preserving and protecting the constitutionally guaranteed right to health. It is an essential tool to consume news and remain updated about the spread of the pandemic. It is also necessary

in order to stay in touch with family during the present lockdown (guaranteed under Article 19(1)(a)); and, at a more general level, to conduct business (guaranteed under Article 19(1)(g)).

BRIEF FACTS:

- 14.** The brief facts giving rise to the present Petition are stated below.
- 15.** 2G, or 2nd generation wireless telephone technology, permits the sending and receiving of messages (SMSs and MMSs) on the mobile phone and limited web browsing. In 2008, 3G, or 3rd generation internet services were introduced in India, and this was the first time that users could properly browse the internet, send emails, download videos, share photos, or use other smartphone technology. 3G and 4G services support far greater voice and data capacity, data transmission, and other internet applications. A true copy of article explaining the difference between 1G, 2G, 3G, 4G, and 5G, available at <http://net-informations.com/q/diff/generations.html> is annexed herewith and marked as **Annexure P-10** at pgs **147** to **150**. A true typed copy of article titled “MTNL to launch 3G in Delhi on Dec 11” dated 06.12.2008 published in Economic Times is annexed herewith and marked as

Annexure P-11 at pages **151 to 152**.

16. The International Telecommunications Union characterizes 4G services as International Mobile Telecommunications Advanced (IMT-Advanced) systems. The ITU has noted that compared to their predecessors, IMT-Advanced systems have *“capabilities for high-quality multimedia applications within a wide range of services and platforms providing a significant improvement in performance and quality of service.”* ITU’s definition of 4G services has also been relied upon by the TRAI which has noted that a 4G network requires a mobile device to be able to exchange data at 100 Mbps for high mobility communication and 1 Gbps for low mobility communication. True copy of undated ITU Report titled “Requirements related to technical performance for IMT-Advanced radio interface(s)” dated on IMT-Advanced systems is annexed herewith as **ANNEXURE P-12** at page nos. **153 to 160**. True copy of TRAI’s Technology Digest dated May 2018 is annexed herewith as **ANNEXURE P-13** at **page nos. 161 to 168**.
17. A comparison of internet speed available on 2G, 3G and 4G networks as per TRAI’s MySpeed App is provided below in a tabular format for the convenience

of this Hon'ble Court:

2G	2G or GSM is a digital mobile technology that provides voice call service & data services with download speed upto 384 Kbps.
3G	3G stands for the third generation of mobile connection technology. 3G or WCDMA is an upgraded mobile technology version of 2G, which can provide better voice quality than 2G and very high download data speeds (upto 42 Mbps).
4G	4G stands for the fourth generation of mobile connection speeds. 4G or LTE is upgraded mobile data technology that provides extremely high download data speed upto 150 Mbps and advanced LTE can provide download speeds upto 300 Mbps. Voice call service in LTE is provided over data/packet network (VoLTE- voice over LTE) unlike 2G/3G, where circuit switched network is used to make voice call.

- 18.** That on 02.08.2019, a Security Advisory was issued by the Civil Secretariat, Home Department, Government of Jammu and Kashmir, that in view of the latest intelligence inputs of terror threats and the prevailing situation in the Kashmir Valley, tourists and the Amarnath Yatris were advised to curtail their stay and make arrangements for their return in the interest of safety and security. Subsequently, educational institutions and offices were ordered to remain shut until further orders.
- 19.** On 05.08.2019, as recorded in the judgment of this Hon'ble Court in *Anuradha Bhasin* (supra), mobile phone networks, internet services, landline connectivity were all discontinued in the Valley, with restrictions on movement also being imposed in some areas.
- 20.** This was followed by the issuance of Constitutional Order 272 on 05.08.2019 by the President of India, applying all provisions of the Constitution of India to the State of Jammu and Kashmir, and modifying Article 367 (Interpretation) in its application to the State of Jammu and Kashmir. In light of the prevailing circumstances, on the same day, the District

Magistrates, apprehending breach of peace and tranquility, imposed restrictions on movement and public gatherings by virtue of powers vested under Section 144, Cr.P.C.

- 21.** In view of the total communication shutdown in Jammu & Kashmir, a writ petition was filed by Anuradha Bhasin, the Executive Editor of Kashmir Times newspaper under Article 32 of the Constitution, W.P. (C) No. 1031/2019 seeking, *inter alia*, the setting aside or quashing of any and all order(s) issued by the Respondents herein, by/under which any and/or all modes of communication, including internet, mobile and fixed-line telecommunication services had been shutdown or suspended or in anyway made inaccessible or unavailable in any locality/area/district or division or region of the State of Jammu and Kashmir for being *ultra vires* Articles 14, 19 and 21 of the Constitution of India. The Petition had also sought appropriate orders for the immediate restoration of all modes of communication including mobile, internet and landline services throughout Jammu and Kashmir; and for ensuring free and safe movement of reporters, journalists and other media personnel.
- 22.** Vide judgment dated 10.01.2020, this Hon'ble Court

was pleased to issue the following directions in *Anuradha Bhasin* (supra):

- a) Respondent No. 1 and its competent authorities were directed to review orders issued under the Telecom Suspension Rules 2017 in accordance with the proportionality standard.
- b) Respondent No. 1 and its competent authorities were directed to publish all orders in force, as well as all future orders issued under Telecom Suspension Rules 2017.
- c) The Review Committee constituted under Rule 2(5) of the Telecom Suspension Rules 2017 was directed to periodically review telecom and internet shutdown orders every seven working days.
- d) Respondent No. 1 and competent authorities were directed to consider immediately providing access to the internet for essential services like hospital and banking services.

23. Pursuant to the orders passed by this Hon'ble Court,

Respondent No. 1 passed various orders dated 14.01.2020, 18.01.2020, 24.01.2020, 26.01.2020, 28.01.2020, 31.01.2020, 07.02.2020, 09.02.2020, 11.02.2020, 13.02.2020, 15.02.2020, 20.02.2020, 23.02.2020, 24.02.2020, 04.03.2020, 10.03.2020, 16.03.2020, 17.03.2020 and 26.03.2020. Through these orders, Respondent No. 1 initially provided access to select whitelisted websites at 2G internet speed but there was a complete ban on social media and VPNs. Vide Order dated 04.03.2020, the government provided access to all websites and removed restrictions on use of social media and VPNs. However, Internet Service Providers were directed to continue slowing down internet speed to 2G for all mobile internet users. The Impugned Order dated 26.03.2020 perpetuates this status quo and directs continued denial of 4G internet services to residents of Jammu & Kashmir.

A true typed copy of order dated 14.01.2020 issued under the Telecom Suspension Rules by Respondent No. 1 is annexed herewith as **ANNEXURE P-14 at pg nos. 169 to 173**. A true typed copy of order dated 04.03.2020 issued under the Telecom Suspension Rules by Respondent No. 1 is annexed herewith as

ANNEXURE P-15 at pg nos. **174 to 176**. A true typed copy of order dated 17.03.2020 issued under the Telecom Suspension Rules by Respondent No. 1 is annexed herewith as **ANNEXURE P-16** at pg nos. **177 to 178**.

- 24.** During this period, the SARS-COV-2 virus which causes Coronavirus Disease (COVID 19) emerged in China and rapidly spread to the rest of the world. The very first cases of COVID 19 emerged in Wuhan, China in December 2019 and it was declared a global pandemic by the World Health Organization on 11.03.2020 by which time the virus had spread to 114 countries including India. The first COVID 19 case in India was confirmed on 30.01.2020. The initial outbreak took place in Kerala but in the subsequent weeks, there were confirmed cases in many other states of the country as well. The first COVID 19 case in Jammu and Kashmir was confirmed on 09.03.2020, and on 16.03.2020, the Lieutenant Governor of Jammu and Kashmir promulgated the J&K Epidemic Diseases (Covid-19) Regulations Act. The first COVID 19 related fatality in the region took place on 26.03.2020. True copy of the news report dated 17.03.2020 titled 'J&K

declares epidemic' published by the Tribune is annexed herewith as **ANNEXURE P-17 at** page nos. **179 to 180.**

- 25.** The unprecedented nature of the COVID 19 pandemic was acknowledged by the Prime Minister, Mr. Narendra Modi in his widely broadcasted speech on 19.03.2020 where he urged the public to stay indoors on Sunday and called for a 'Janata Curfew.' With the number of COVID 19 cases rapidly rising, the Prime Minister in his next speech on 24.03.2020 announced a complete 21 day lockdown across the country. Immediately after his speech, Respondent No. 2 issued guidelines outlining measures to be taken for containment of COVID 19 in the country and officially notified the pandemic as a disaster under the Disaster Management Act, 2005. In particular, Para 4 of these Guidelines require all commercial and private establishments to remain closed. However, exceptions have been made for essential commodities and services, and under Para 4(d), telecommunication and internet services are allowed to operate despite the lockdown. This is in consonance with the National Telecom Policy 2012 which recognizes that the right to broadband connectivity is a *"basic necessity like*

education and health.” True copy of National Telecom Policy 2012 is annexed herewith as **ANNEXURE P-18** at page nos. **181** to **200**. True copy of Order No. 40-3/2020-DM-I(A) dated 24.03.2020 along with the annexed Guidelines issued by the Ministry of Home Affairs invoking powers under the Disaster Management Act, 2005 is annexed herewith as **ANNEXURE P-19** at page nos. **201** to **207**. True copy of Addendum dated 25.03.2020 to Order No. 40-3/2020-DM-I(A) issued by Respondent No. 2 is annexed herewith as **ANNEXURE P-20** at **page nos. 208 to 209**.

- 26.** Despite the widespread nature and the deleterious health, emotional, economic, social, and financial impact of COVID-19, and the lockdown that the country is under, Respondent No. 1 continued the restriction of internet speed to 2G only. As per the Telecom Regulatory Authority of India's data, Jammu and Kashmir had 1,03,20,749 wireless subscribers (necessary for mobile internet) on 30 December 2019. In comparison, the wireline subscriber base (or fixed line internet connectivity) was only 1,32,743 on 30 December 2019. True copy of TRAI's Press Release No.

17/2020 dated 25.02.2020 is annexed herewith as **ANNEXURE P-21** at page nos. **210** to **227**.

27. After the national lockdown was announced on 24.03.2020, orders under Section 144, Cr.P.C. were issued to restrict movement of the public across Jammu and Kashmir. Similar orders had also been issued for specific districts prior to this to contain the spread of COVID 19. True copy of news report titled 'Coronavirus: Section 144 imposed in Jammu and Kashmir amid COVID-19 lockdown' dated 25.03.2020 published by Deccan Herald is annexed herewith as **ANNEXURE P-22** at page nos. **228** to **229**. True copy of Order dated 16.03.2020 issued by District Magistrate, Kupwara is annexed herewith as **ANNEXURE P-23** at page nos. **230**.

28. Doctors and patients in Jammu and Kashmir have reported facing many difficulties in treating and managing COVID 19 due to the internet slowdown. For instance, doctors have reported that they have to waste precious time trying to download the latest studies, protocols, manuals and advisories on treatment and management of COVID 19. In some cases, doctors are

not able to access these resources at all due to the internet speed being too slow to download heavy files. Various public health practitioners, medical professionals, including the Jan Swasthya Abhiyan (the national platform co-ordinating activities and actions on health and health care across the country), wrote an open letter to Respondent No. 1 highlighting the difficulties faced by doctors in Jammu & Kashmir due to the slow internet speeds, and sought restoration of 4G internet. True copy of open letter dated 25.03.2020 sent by Jan Swasthya Abhiyan and other public health practitioners, medical professionals, and others is annexed herewith as **ANNEXURE P-24** at page nos. **231 to 234**. True copy of the news report dated 26.03.2020 titled 'Kashmir survived without 4G internet for months, with coronavirus, it really needs it' published by India Today is annexed herewith as **ANNEXURE P-25** at page nos. **235 to 238**.

- 29.** Further, patients are being placed at higher risk of infection because the slow internet speed renders telemedicine impossible. During pandemics, hospitals become hotbeds of infection and any effective containment strategy must limit the number of persons visiting hospitals. Reducing the number of visitors in

hospitals is only possible if doctors are able to remotely assess and monitor the condition of patients who do not require intensive care. However, remote consultations, which require video facilities to visually examine the patient, are practically impossible with slow 2G internet services. True copy of article by Chief of Doctors Association, Kashmir dated 24.03.2020 published by *The Wire* is annexed herewith as **ANNEXURE P-26** at page nos. **239 to 242**.

- 30.** The media, including social media, plays a vital role during public health emergencies by disseminating accurate and latest information and fact checking false claims. However, the media cannot perform this role effectively if journalists are unable to receive and share audio-visual content which includes information that comes from the administration itself. Since most people are confined to their homes due to the 21 day lockdown, it is very difficult for journalists to access fixed line connections at their offices or at government established kiosks. The Prime Minister has praised Google and Twitter for their campaign to bust the myths around COVID-19. The media's contribution during this crisis has also been appreciated by

government officials like Delhi's Chief Minister, for highlighting the humanitarian fallout of the lockdown and enabling the government to correct lapses in relief work. True copy of news report "Coronavirus crisis: PM Modi praises Google, Twitter for campaign against myths around COVID-19" dated 21.03.2020 published in Business Today in annexed herewith as **ANNEXURE P-27** at page nos. **243 to 245**. True copy of the news report dated 27.03.2020 titled Kejriwal urges 'media friends' to point out gaps in relief work during Covid-19 lockdown published by Hindustan Times is annexed herewith as **ANNEXURE P-28** at page nos. **246 to 247**.

- 31.** The combination of an internet slowdown and the lockdown has made it impossible for the students in Jammu and Kashmir to access education. The Kashmir Private School Association has urged the government to restore 4G internet services in the region where schools have not been able to function properly since 05.08.2019. Online classes are the only option for students to continue their education but schools have been unable to use tools like Zoom and Google Classroom due to slow internet speed. True copy of the news report dated 24.03.2020 titled 'Covid-19 lockdown: Kashmir seeks 4G services for schools to

offer e-learning' published by Live Mint is annexed herewith as **ANNEXURE P-29** at pg nos. **248 to 249**.

- 32.** It is respectfully submitted that the lockdown can also interfere with the functioning of the judiciary and the Jammu and Kashmir High Court has been closed down for the period of the lockdown. Only exceptionally urgent matters will be heard by the Jammu and Kashmir High Court during this period and all hearings shall take place in virtual mode only. True copy of Circular dated 26.03.2020 issued by the Registrar General of the Jammu and Kashmir High Court is annexed herewith as **ANNEXURE P-30** at page nos. **251**.

QUESTIONS OF LAW

- 33.** It is submitted that in light of the aforementioned facts, the following questions of law have arisen:
- a) Whether the impugned order restricting mobile internet speeds in Jammu & Kashmir to 2G internet is violative of the right to health guaranteed under Article 21 of the Constitution, inasmuch as the?
 - b) Whether, by passing the impugned order in times of the COVID-19 epidemic, Respondent No. 2 has failed in its constitutional obligation to provide – or at least, not to inhibit the provision of – the essential

digital *infrastructure* that makes the right to health effective, and not reduce it to a nullity?

- c) Whether the restriction in respect of mobile internet speeds that were hitherto present in the Union Territory is permissible, given that it effectively amounts to a targeted roll-back of the rights of the residents of Jammu & Kashmir?
- d) Whether the right to a well-functioning and effective internet is an essential service and a basic necessity, that can be restricted, in times of an epidemic (such as COVID-19) and a nation-wide lockdown that has put a complete halt to the movement of people?
- e) Whether the impugned order restricting mobile internet speeds in Jammu & Kashmir to 2G internet is violative of Article 19(1)(a) of the Constitution, inasmuch as it deprives the public of the latest information about the spread of COVID-19, the measures being taken to address it, and the restrictions imposed on the general public?
- f) Whether the restriction of mobile internet speeds has directly impacted the enjoyment of various other fundamental rights, such as the right to education for school children (guaranteed under Article 21); the right to occupation and business while working from

home (guaranteed under Article 19(1)(g)); and the right to access justice (under Article 21), in the specific context of the ongoing lockdown?

- g) Whether judicial scrutiny in respect of the impugned order ought to be heightened in the context of the COVID-19 pandemic, by virtue of the fact that it deprives, or at the very least impedes, citizens residing in the Union Territory of Jammu & Kashmir, from accessing essential services, including medical services, media etc., i.e. recognised essential services in the Government of India Notifications passed in response to COVID-19 epidemic?
- h) Whether, specifically, impeding access to essential services by means of the impugned order to the residents of one particular Union Territory is violative of Article 14 of the Constitution of India, as it singles out the residents of a specific Union Territory for an unreasonable burden, unconnected to the original objectives of internet shutdown in Jammu & Kashmir?
- i) Whether the restriction of mobile internet speeds to 2G fails the proportionality test as well as the guidelines laid down by this Hon'ble Court in

Anuradha Bhasin v Union of India & Ors, (2020) SCC
Online SC 25?

- 34.** That the present Writ Petition is being filed inter alia on the following grounds which are to be read individually and collectively:

GROUND

The importance of effective internet access in securing the right to health

A. BECAUSE, in sum, (a) the guarantee of life and personal liberty under Article 21 of the Constitution of India includes the right to health; (b) fundamental rights under the Constitution also include an obligation upon the State to provide - or at least, not to inhibit the provision of - the essential *infrastructure* that makes those rights effective, and does not reduce them to a nullity; and (c) during a serious and severe pandemic such as COVID-19, deprivation of speedy and efficient internet access (4G) amounts to an effective negation of the right to health.

B. BECAUSE it is now well settled that Article 21 guarantees the right to health. Furthermore, as indicated above, in a welfare State like India, it is the obligation of the State to ensure the creation and the

sustaining of conditions congenial to good health. This Hon'ble Court in *Vincent Panikurlangara v. Union of India*, (1987) 2 SCC 165 held that:

“A healthy body is the very foundation for all human activities. That is why the adage “*Sariramadyam Khaludharma Sadhanam*”. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health....

[Article 47] has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State.

..In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment

of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority — perhaps the one at the top” (*Emphasis supplied*)

- C.** BECAUSE, it is now well settled, after the decision of this Hon’ble Court in *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37 that it is the constitutional obligation of the State to provide adequate medical services and medical aid to the people to preserve human life and that “whatever is necessary for this purpose has to be done”. The right to live with human dignity guaranteed under Article 21 of the Constitution derives its life breadth from the Directive Principles of State Policy, particularly Articles 39(e)-(f) and Article 41 and therefore, must include protection of the health; and, opportunities and facilities for children to develop in a healthy manner (See also *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161).

- D.** BECAUSE, therefore, the right to health is a composite right that requires the State to take active

measures to ensure the presence of necessary physical - and, by extension - digital - infrastructure within which this right can be made an effective reality. The term “health” implies a state of complete physical, mental and social well being; and not merely the absence of disease or infirmity, It also includes medical care and health facilities as well (See *CESC Ltd. v. Subhash Chandra Bose*, (1992) 1 SCC 441).

E. BECAUSE, in addition, as this Hon’ble Court has held on many occasions, where a fundamental right is guaranteed under the Constitution, it must also include incidental guarantees that are *essential* to an adequate fulfillment of that right, and without which that right would become *illusory*. (*Union of India v Naveen Jindal*, (2004) 2 SCC 510).

F. BECAUSE a combination of the advent of COVID-19 and the accompanying lock-down has created a situation where the right to health, for its effective fulfillment, is dependent on the availability of an effective and speedy internet, for reasons set out in the Facts above, and reiterated below. It is further

submitted that judicial scrutiny in respect of the impugned order ought to be heightened in the context of the COVID-19 pandemic, by virtue of the fact that it deprives, or at the very least impedes, citizens residing in the Union Territory of Jammu & Kashmir, from accessing essential services, including medical services, media etc., i.e. recognised essential services in the Government of India Notifications passed in response to COVID-19 epidemic.

- G.** BECAUSE internet speeds of 2G prevent the residents of Jammu & Kashmir, whether the patients, doctors, or the general public from accessing the latest information, guidelines, advisories, and restrictions about COVID-19 that are available and continuously updated online. 2G internet speeds, unlike 3G or 4G, do not facilitate effective web browsing, emails, video downloading, picture sharing, or any other smartphone technology - services that are essential in times of an epidemic. Doctors in Jammu & Kashmir have expressed their inability to download PDF files containing guidelines for intensive care management in hospitals or the damage caused by delays in receiving and accessing

the latest protocols, studies, manuals, advisories, and containment strategies. The denial of access to critical information in times of a “notified disaster” seriously impacts the right to public health. As indicated above, it is well settled that the State has a positive constitutional obligation to ensure the presence of adequate physical infrastructure in order to create conditions conducive to public health. In an analogous manner, in today’s digital age, this positive obligation also extends to providing an adequate digital infrastructure to ensure the protection of health of its citizens.

- H.** BECAUSE the lack of properly functioning internet services in the Union Territory is hampering social distancing efforts, and resulting in more in-person hospital and doctor visits, which drastically increases the risk of virus spread. A well functioning and fast 4G internet service (like the rest of the country) is necessary for patients to be able to conduct video consultations with doctors for understanding COVID-19 symptoms, and for treatment of other medical and psychological problems, including anxiety, which require counselling. The constraints faced by doctors,

which have a ripple effect on the entire population of Jammu & Kashmir, violates the right to health, and the obligation of the State to do “whatever is necessary” to ensure public health, guaranteed under Article 21 of the Constitution.

I. BECAUSE this Hon’ble Court has stressed the importance and directed the use of technology in the anticipation, prevention and of disasters under the Disaster Management Act. This Hon’ble Court in ***Swaraj Abhiyan v. Union of India, 2016 SCC Online SC 485***, held “it is high time that State Governments realize the vast potential of technology and the Government of India should insist on the use of such technology in preparing uniform State Management Plans for a disaster.” (para 109, point 6).

J. BECAUSE the link between the right to health, and the infrastructure that is required to secure that right, has been recognised in other jurisdictions. For example, in ***Eldridge v Canada, [1997] 3 S.C.R. 624***, the Supreme Court of Canada held that it was unconstitutional to deny sign language interpreters to deaf individuals under the publicly-funded healthcare scheme, as that would render their

statutorily guaranteed right of access to healthcare effectively illusory.

K. BECAUSE it is also important to note that the State here, is not being requested to create *new* infrastructure, or to use its budgetary allocation in specific ways to bolster the right to health. It is only being asked not to *deprive* citizens in Jammu & Kashmir of facilities that are *already* available to Indians across the country - i.e., effective and speedy internet, an indispensable tool in the struggle against the COVID-19 epidemic. The restriction in respect of mobile internet speeds effectively amounts to a targeted roll-back of such rights in respects of the residents of Jammu & Kashmir.

L. BECAUSE the right to internet connectivity has repeatedly been recognised by the Government of India as a basic necessity or an essential service to ensure the right to health.

a. The “lockdown” Guidelines that were annexed with order passed by Respondent No. 1, Ministry of Home Affairs Order No. 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, terming the COVID-19 crisis in India as an epidemic, expressly excluded

“telecommunications, internet services, broadcasting and cable services. IT and IT enabled Services only (for essential services) and as far as possible to work from home.” Even the addendum to these Guidelines No. 40-3/2020-DM-I(A) dated 25.03.2020 added IT vendors for banking operations and data centres for government related activity only as part of the essential services exempt list.

- b. Similarly, the National Telecom Policy 2012 recognizes the right to broadband connectivity as a *“basic necessity like education and health.”*
- c. The importance of technology, and the internet is also evident from the fact that disseminate accurate information about the pandemic, Respondent No. 2 has launched several laudable initiatives such as the Ministry of Health’s COVID 19 dashboard and MyGovIndia’s WhatsApp chatbot which responds to queries with text, infographics and videos. Even private entities like Apollo Hospitals have launched tech tools which enable people to assess their risk of developing COVID 19. However, the residents of Jammu and Kashmir are unable to access potentially life

saving information, using these services, due to slowdown of internet speed in the region.

However, by depriving the residents of Jammu & Kashmir from a well functioning and speedy 4G mobile internet service, the Respondents are violating their fundamental rights under Articles 14, 19, and 21 of the Constitution.

The impugned order restricts the enjoyment of fundamental rights to education, livelihood, and access to justice guaranteed under the Constitution

M. BECAUSE the right to education is guaranteed both under Article 21A (in specific terms) and, more generally, as a subset of the right to life under the Constitution.

N. BECAUSE in the specific context of the ongoing lockdown, restricted internet speeds are directly impacting the ability of children of Jammu & Kashmir to exercise their fundamental right to education, guaranteed under Article 21A of the Constitution. The shut down of schools and colleges all over the country has resulted in educational institutions shifting their mode of instruction online, using video conferencing services and apps such as

Google Hangouts, or Zoom. However, the restriction of mobile internet speeds to 2G deprives children from accessing these e-learning services, thus violating their right to education. Moreover, since the penetration of fixed line internet connectivity in Jammu & Kashmir is very low, and is also extremely slow, students will be deprived of the benefits of education, and of developing thinking and curious minds, necessary for their intellectual, mental, and emotional growth. It is submitted that the President of the Kashmir Private School Association has stated that while private schools in the Valley have indicated their willingness to move to online lesson plans for students to facilitate remote learning, their ability to do so has been hampered by the restricted internet speeds and broadband connectivity. The resulting discrimination in access to education between the students of Jammu & Kashmir and students in the rest of the country is also a violation of Article 14 of the Constitution.

- O.** BECAUSE restricted internet speeds also makes it virtually impossible to follow the government mandated “work from home” policy, especially for

businesses in the Information Technology and ITES (IT Enabled Services) sector. This Hon'ble Court in *Anuradha Bhasin* (supra) was pleased to recognise that the freedom of trade and commerce through the medium of the internet is constitutionally protected under Article 19(1)(g) of the Constitution. It is submitted that the restrictions imposed specifically on the people of Jammu & Kashmir are not justifiable under Article 19(6), especially given the prevailing situation of the COVID-19 epidemic and the lockdown of the entire country.

P. BECAUSE vide Circular No. 15/GS dated 26.03.2020, the Hon'ble Chief Justice of the Jammu & Kashmir High Court was pleased to direct that access to all court complexes in the Union Territory would remain closed during the period of the lockdown and any "urgent business", whether in the High Court or in the Trial Courts, "shall be transacted on the virtual mode". However, many people in the State will be unable to access such virtual modes of communication/ video conference facilities, which are available on an app, in view of the impugned order's restriction on mobile internet speeds. Such a restriction results in a denial of

access to justice, and is violative of the fundamental rights under Articles 14 and 21. This Hon'ble Court in *Anita Kushwaha v Pushap Sudan*, (2016) 8 SCC 509, held that the right to a legal remedy (*ubi just ibi remedium*), guaranteed access to justice, and an *adequate* grievance redress mechanism is a facet of the right to life and liberty guaranteed under Art. 21 and the right to equality under Art. 14 of the Constitution



Right to the freedom of speech and expression and internet access

- Q.** BECAUSE it is well settled that that the freedom of speech and expression under Article 19(1)(a) of the Constitution is a vital fundamental right, central to guaranteeing individual autonomy as well as a thriving democracy based upon a marketplace of ideas (Kindly See ***Indian Express Newspapers (Bombay) Private Ltd. and Ors. vs. Union of India & Ors.*, (1985) 1 SCC 641**)
- R.** BECAUSE the freedom of speech under Article 19(1)(a) has been consistently interpreted to include

the right of the public to know, receive, and impart information so as to make an informed choice on the issues touching us. In ***Ministry of Information and Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161***, this Hon'ble Court noted:

“The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose....

193. *Now, what does this public good mean and signify in the context of the broadcasting medium? In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware — aware of social, political, economic and other issues confronting them....”*

(Emphasis supplied)

S. BECAUSE this Hon'ble Court in *Anuradha Bhasin* (supra) has expressly recognised that expression

through the internet has gained “contemporary relevance” and is one of the “major means of information diffusion”. Therefore, it was pleased to hold that “*the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.*” It is submitted that access to the internet is a basic and essential facet of the freedom of speech and expression and the right to know, including the right of the media to report freely.

- T.** BECAUSE access to the internet has been specifically recognized as a fundamental right in a recent decision of the Hon’ble Kerala High Court in ***Faheema Shirin v. State of Kerala***, (W.P. Civil No. 19716 of 2019).
- U.** BECAUSE the COVID-19 outbreak and the ensuing national lockdown has made it impossible for persons anywhere in India to venture out for any kind of activity, now rendering the internet an indispensable tool for carrying out economic and educational activity. Thus, access to the well functioning internet is now crucial for survival. It is settled law after *PUCL v Union of India*, (2013) 10

SCC 1 that fundamental rights (such as the right to life, right to health, and the right to know) also include ancillary guarantees that make those rights meaningful. In the present case, the impugned order by restricting internet speed to 2G directly violates these fundamental rights.

- V.** BECAUSE severe restrictions on the speed of internet services directly limits the right of the public to know the latest information about the spread of COVID-19, the measures being taken to address it, and the restrictions imposed on the general public. For instance, under 2G network, the residents of Jammu & Kashmir will not be able to watch the Prime Minister's speeches live on their mobile phones. The impugned order has also resulted in unwarranted restrictions on the dissemination of essential medical information and updates by the State and doctors. Given the rapidity with which the situation is changing and developing, updates are being issued multiple times a day through online platforms such as "Twitter" and newspaper websites, which are becoming impossible to access for people in Kashmir in the absence of high speed internet. These updates include the location of testing centres, the nature and

extent of restrictions on movement, the inclusion and exclusion of services in essential services and the manner of availing these services, the nature of relief packages being announced by different ministries and institutions such as the Reserve Bank of India, the location of relief shelters, information regarding areas in which positive cases have been found which enables persons in the area to self isolate, voluntary contact tracing by keeping in touch with one and another, healthcare advisories such as symptom tracking and advisories against taking certain medicines.

- W.** BECAUSE other traditional avenues of information such as newspapers are unable to provide direct updates and are at risk of being stopped owing to unavailability of delivery persons as well as rumours and fear of the possibility of transmission of the virus through paper. The ability of journalists to share audio visual content to fact check false claims and disseminating the latest updates and advisories is severely hampered, thus affecting their right, and the right of the public, guaranteed under Article 19(1)(a) of the Constitution.

X. BECAUSE other mediums of information such as Television news channels while suitable for national updates are unable to provide localised updates as well as detailed updates of relief work and status of cases in particular districts. Information can be effectively transmitted through easily accessible videos and photographs, especially in the local languages (Kashmiri and Urdu), for which it is essential to have high speed internet.

In addition, the impugned order, No. Home-21(TSTS) of 2020 dated 26.03.2020 is disproportionate and lacks any reasoned basis and does not comply with the principles laid out in Anuradha Bhasin

Y. BECAUSE the restriction of mobile internet to 2G speeds is a disproportionate restriction on fundamental rights. This Hon'ble Court has consistently held that the restriction on fundamental rights under Article 19 and 21 must pass the test of proportionality. Under this test, restrictions upon a fundamental right must be imposed by law (a); they must be in service of a "legitimate aim" (b); they must be suitable to achieve that aim (i.e., bear a rational relationship with the aim) (c); they must be necessary (i.e., the least restrictive alternative available to

achieve the said goal) (d); and they must not be disproportionate in their impact upon citizens (e).

Z. BECAUSE in *Anuradha Bhasin*, this Hon'ble Court held that the proportionality standard - in the manner outlined above - applies squarely to the case of internet shut-downs and restrictions upon access to the internet. While in the judgment itself, the Court did not subject an internet suspension order to the test of proportionality *on its merits* - since the orders had not been placed before it, it nonetheless made it clear that future suspension orders would have to be publicly promulgated, and subject to judicial review in light of the standards laid out above.

AA. BECAUSE it is submitted that as per Government order No. Home-21 (TSTS) of 2020 dated 26.03.2020 mentions the need for restrictions in the interest of sovereignty of the State and public order. The impugned Order is cryptic, and provides no further reasons. Apart from simply reiterating the elements of the proportionality standard (such as the consideration of less restrictive alternatives), the Order sets out no justification of why, many months after the events of August 5, internet speed continues

to be restricted in Jammu and Kashmir. In addition, it is evident that the impugned order fails the test of proportionality, as:

- a) The restriction of the speed of the internet does not bear a rational relationship to protecting security, as it is possible for persons who are responsible for such activities engage in basic communication with one and another using 2G speeds.
- b) The measure also fails the necessity test as:
 - i. It was possible for the State to use intelligence inputs and antecedent reports to identify suspected persons and restrict and block their numbers.
 - ii. The State has already restricted the use of internet on pre-paid SIM cards on the ground that they can be obtained without proper verification. Thus, by the State's own position, Postpaid connections are unlikely to be used for illegal activities given their ability to be traced out. Therefore, there is no need to restrict to internet speed on postpaid mobile connections.

iii. The State is already in a state of a lockdown and movement is severely restricted due to the COVID outbreak thus reducing the possibility of any actions that can endanger public order. To the contrary, the absence of avenues of continuous updates about the situation as it unfolds and details of relief centres of the Government are more likely to endanger public order.

c) In particular, and in view of the changed situation because of the spread of the COVID-19 pandemic, it is evident that the impugned Order fails the final prong of the constitutional standard, which requires that there must be a proportionate balance between the interests of the State, and the extent of the restrictions upon fundamental rights. It is respectfully submitted that in addition to the necessity of speedy and effective internet towards guaranteeing rights under Article 19(1)(a), it has been demonstrated above that without access to such internet, the right to health - in times of a pandemic - is effectively rendered

illusory. It is respectfully submitted that in the struggle against COVID-19, for reasons advanced above, access to speedy and effective internet is a question of health and survival. In this context, a measure by the Government - reportedly for the security of persons - which threatens their survival, and also their security due to the need for information during the pandemic is indeed disproportionate.

BB. BECAUSE keeping in mind the “temporary” nature of the Telecom Suspension Rules, this Hon’ble Court was pleased to observe in *Anuradha Bhasin* (supra) that indefinite suspension of communication services is impermissible and periodic review of Respondent No. 1’s orders requires an assessment of whether the restrictions are “necessary” and “proportionate”, apart from being in compliance with Section 5(2) of the Telegraph Act. Pursuant to the *Anuradha Bhasin* (supra) judgment, Respondent No. 2 has passed various orders dated 14.01.2020, 18.01.2020, 24.01.2020, 31.01.2020, 07.02.2020, 15.02.2020, 24.02.2020, 04.03.2020, 17.03.2020 and 26.03.2020 restricting internet services in the

Union Territory, thus failing to restore complete internet access seven months after it was shut down (in August 2019) in Jammu & Kashmir.

CC. BECAUSE the current restriction of mobile internet to 2G, imposed vide the impugned order, further fails the test of necessity and proportionality because it fails to take into consideration the reality of the current lockdown, imposed on account of the COVID 19 disaster. On 16.03.2020, the Lt. Governor of Jammu & Kashmir had promulgated the J&K Epidemic Disease ^B (Covid-19) ^w Regulations, 2020, declaring coronavirus as an epidemic and imposing various restrictions. This was followed by Order No. 40-3/2020-DM-I(A) dated 24.03.2020 issued by Respondent No. 2 laying down various guidelines to be taken by States and Union Territories for containing the COVID-19 epidemic in the country. The cumulative effect of these orders and the preventive and protective steps taken by the Union and the Union Territory has been the closure of all government offices, their autonomous bodies, and corporations; all commercial, private, and industrial establishments; and all transport and hospitality

services, subject to some specified exceptions. In addition, all educational, training, research and religious places of worship; and social, political, sports, entertainment, academic functions and gatherings have also been closed. In view of these closures, and the fact that orders under Section 144, Cr.P.C. have also been passed in various districts, the continued restriction of mobile internet services to 2G based on the vague language of “overall security situation” and “reports of law enforcement agencies” is completely disproportionate and unjustified.

DD. BECAUSE by restricting the internet for all residents of Jammu and Kashmir on account of security concerns treats all residents with suspicion of all criminal activity. It is respectfully submitted that the presumption of collective criminality has long been rejected in our law and jurisprudence: the colonial Criminal Tribe Act, which punished entire tribes and indigenous groups as being potentially criminal, was described as a blot on the Constitution, and was repealed shortly after independence. In *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 321, Justice Beg justified the suspension of habeas

corpus during the Emergency as flowing from a “jurisdiction of suspicion”; however, with the passage of the 44th Amendment and the overruling of ADM Jabalpur in ***KS Puttaswamy v. Union of India, (2017) 10 SCC 1***, it is respectfully submitted that the “presumption of criminality” and the “jurisdiction of suspicion” are no longer constitutionally valid; rights of citizens cannot be restricted without probable cause or suspicion.

EE. BECAUSE this Hon’ble Court in *Anuradha Bhasin (supra)* noted that while the State was best placed to make an assessment of threat to public peace and tranquility or law and order, they were required to “state the material facts” so as to facilitate judicial review of whether “there are sufficient facts to justify the invocation of this power”. It further held that any restriction on fundamental rights (in respect of communication/internet shut downs) should be supported by sufficient material and is amenable to judicial review. Orders passed under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (“Telecom Suspension Rules”) must be reasoned orders and indicate an application of mind. It is submitted that the present

impugned order dated 26.03.2020 does not comply with these bare minimum requirements, as laid down under the Telecom Suspension Rules and the judgment of this Hon’ble Court in *Anuradha Bhasin*, and is therefore liable to be struck down.

FF. BECAUSE complete mobile data services at 2G speeds (without any whitelist) were restored for all post paid sim card holders and verified pre paid sim card holders in Jammu and Kashmir on 04.03.2020, which was then extended vide orders dated 17.03.2020 and 26.03.2020. However, a comparison of these three orders passed by Respondent No. 2, reveal a complete non-application of mind inasmuch as the reasons given for restricting mobile internet speeds to 2G are almost identical; fail to elaborate on the type of supporting material; and make no mention of the evolving crisis caused by the COVID-19 pandemic, and the consequent lockdown in the Union Territory and the country.

Order Number	Rationale	Order
Order No. 17(TSTS) of 2020 dated 04.03.2020	Upon regular assessment of impact of the directions for regulation of the telecom services on the <u>overall security situation and maintenance of public order and taking note of the position brought out in the reports of the law enforcement agencies, while</u>	2G mobile internet for postpaid customers and verified prepaid customers for

	<p>keeping in view the aspects of reasonability of restrictions with regard to the principle of proportionality and <u>consideration of available alternatives</u></p> <p>Restrictions necessary in <u>the interest of sovereignty and integrity of India, security of the State and public order.</u></p>	<p>access to all websites.</p> <p>Fixed line connectivity with mac binding to access all websites</p>
<p>Order No. 20(TSTS) of 2020 dated 17.03.2020</p>	<p>On consideration of <u>overall security scenario and the reports of law enforcement agencies</u> <i>inter alia</i> bringing out the necessity of <u>speed related restrictions</u> on mobile data services to prevent misuse of social media applications, as also taking note of recent terror activities, and upon <u>assessment of the available alternatives</u></p> <p>Restrictions absolutely <u>necessary in the interest of sovereignty and integrity of India, security of the State and public order.</u></p>	<p>Restrictions in Order dated 04.03.2020 will continue to apply.</p>
<p>Order No. 21(TSTS) of 2020 dated 26.03.2020</p>	<p>Taking note of the <u>overall security situation in the UT of J&K and the latest reports of the law enforcement agencies</u>, particularly with regard to <u>speed related restrictions</u> on mobile data services , and <u>upon assessment of available alternatives...</u>”</p> <p>Restrictions <u>absolutely necessary in the interest of sovereignty and integrity of India, security of the State, and public order.</u></p>	<p>2G mobile internet for postpaid customers & verified prepaid customers for access to all websites.</p> <p>Fixed line connectivity with mac binding to access all websites</p>

It is submitted that the impugned order, much like the preceding order dated 04.03.2020 and 17.03.2020 does not elaborate in any manner on the “overall security situation” or the latest “reports of law enforcement agencies” which justifies the continued restriction on internet speeds since August 2019.

GG. BECAUSE, to the best of the Petitioner's knowledge, the impugned order passed by Respondent No. 1 under Rule 2(1) of the Telecom Suspension Rules has not been forwarded to the Review Committee as required by Rule 2(2), nor has any periodic review been conducted within seven working days by the Review Committee, as required by Rule 2(5) and the judgment of this Hon'ble Court in *Anuradha Bhasin*. It is submitted that the impugned order does not mention the existence or review by any such Review Committee. Thus, to the extent that the impugned order does not comply with the requirements of the Telecom Suspension Rules, it has to be struck down.

HH. The Petitioner seeks leave of this Hon'ble Court to raise additional grounds.

- 35.** The Petitioner has not filed any other petition before this Hon'ble Court or in any High Court challenging the constitutional validity of the Impugned Order dated 26.03.2020 passed by Respondent No. 1 or any similar relief.
- 36.** The Petitioner submits that there is no other alternative, equally efficacious remedy available to it.
- 37.** The Petitioner states that it is approaching this Hon'ble Court as expeditiously as possible and there is no delay

or laches in filing the present Petition.

- 38.** That the annexures have not been arranged in chronological order as the same are mostly news reports which have been arranged issue-wise.
- 39.** The Petitioner has been unable to file a notarized affidavit owing to the nationwide lockdown and undertakes to do so at the earliest once the lockdown is lifted.
- 40.** This Hon'ble Court has jurisdiction to entertain try and dispose of this Petition under Article 32 of the Constitution of India.
- 41.** That the Petitioner craves leave to alter, amend or add to this Petition.
- 42.** That this Petition has been made bona fide and in the interest of justice.

PRAYER

In the premises, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue a Writ of Declaration and Mandamus or any other appropriate Writ, Direction, Order or such other appropriate remedy to declare the Order issued by Respondent No. 1, Order No. Home-21(TSTS) of 2020 dated 26.03.2020, as being illegal, unconstitutional, violative of Articles 14, 19(1), 21, and 21A of the Constitution of India and thus, void, and/or,

- b. Issue an order or direction directing Respondent No. 1 to restore the internet speed in mobile data services to 4G in the Union Territory of Jammu & Kashmir, and/or
- c. Pass such other orders as may be deemed fit in the facts and circumstances of this case.

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

Filed By:



Place: New Delhi

ALL ABOUT LAW

SHADAN FARASAT

Filed On: **30.03.2020**

ADVOCATE FOR PETITIONER

CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No. _____ OF 2020

IN THE MATTER OF:

Foundation for Media Professionals ... Petitioner(s)

VERSUS

Govt. of U.T. of Jammu & Kashmir & Anr. ... Respondent(s)

AFFIDAVIT

do hereby state on solemn affirmation as under:-

1. That I am the Authorized Representative of the Petitioner

Foundation in the present Writ Petition, and as such I am

conversant with the facts and circumstances of the case, and

hence I am competent to affirm this affidavit.

2. That the contents in the Synopsis and List of Dates at Pages B to

8, the contents in the accompanying Petition from

paras 1 to 42 at pages 1 to 56, and the

accompanying applications are true and correct to the best of

my knowledge and belief, based on information derived from the

record of the case and the legal submissions made therein are

as per the advice of the counsel and are believed to be true and

correct.

3. That the **Annexures** are true copies of the respective Originals.
4. That the organisation has no personal gain, private motive or any such reason whatsoever in filing the present writ petition and the same is in Public Interest.
5. The averments of facts stated herein above are true to the best of my knowledge and belief and no part of it is false and nothing material has been concealed thereof.

DEPONENT

Verification:

Verified at Gurgaon on this 29th Day of March 2020 that the contents of my above affidavit are true and correct and no part of has been concealed thereof.

DEPONENT

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

PUBLIC INTEREST LITIGATION

IA No. ____ of 2020

In

WRIT PETITION (CIVIL) No. _____ of 2020

IN THE MATTER OF:

Foundation for Media Professionals

...Petitioner



Union Territory of Jammu & Kashmir & Anr. **...Respondents**

APPLICATION FOR INTERIM RELIEF

To,

The Hon'ble Chief Justice of India
and His Companion Judges of
the Hon'ble Supreme Court of India

MOST RESPECTFULLY SHOWETH

1. The Petitioner Society has filed the captioned petition challenging Order No. Home-21(TSTS) of 2020 dated 26.03.2020 [**“impugned order”**], which has been passed by Respondent No. 1, *inter alia*, restricting internet speed in mobile data services to 2G only, and providing internet

connectivity only with Mac-binding, for being violative of Articles 14, 19, 21, and 21A of the Constitution of India.

2. The contents of the captioned Writ Petition are not being repeated here for the sake of brevity and may be treated as part and parcel of the application.
3. By way of the present Application, the Petitioner is seeking directions from this Hon'ble Court to direct Respondent No. 1 to restore the internet speed in mobile data services in Jammu & Kashmir to 4G, for the duration of the Coronavirus Disease [**"COVID-19"**] outbreak, in line with the rest of the country.
4. It is respectfully submitted that the advent of the COVID-19 global pandemic has fundamentally altered the existing situation. At present, the following facts exist:
 - a) COVID-19, a highly infectious and communicable disease, is spreading in India. Research into its origins and the best ways of tackling this disease is ongoing, and there is a continuing flow of new information about how best to contain the fall out of the virus, and limit its spread and impact. Much of this information exists on the internet, in the form of instructional and informative videos, news clippings, graphs, and so on.
 - b) The first COVID 19 case in India was confirmed on 30.01.2020. The initial outbreak took place in Kerala, and eventually there were confirmed cases throughout the country. The first COVID 19 case in Jammu and

Kashmir was confirmed on 09.03.2020, and on 16.03.2020, the Lt. Governor of Jammu and Kashmir promulgated the J&K Epidemic Diseases (Covid-19) Regulations Act. The first COVID-19 related fatality in the region took place on 26.03.2020. As of 30.03.2020, there are 41 COVID-19 cases and 2 reported deaths in Jammu & Kashmir.

- c) The unprecedented nature of the COVID 19 pandemic was acknowledged by the Prime Minister in his widely broadcast speech on 24.03.2020, where he announced a complete 21 day “lockdown” across the country. Immediately thereafter, Respondent No. 2 issued Order No. 40-3/2020-DM-I(A) containing guidelines **(Annexure P-15)** outlining measures to be taken for containment of COVID 19 in India and officially notified the pandemic as a disaster under the Disaster Management Act, 2005.
- d) In particular, people were required to confine themselves to their homes; minimise physical and social contact with others; and all commercial and private establishments were to remain closed, at least till 15.04.2020.
- e) However, exceptions have been made for essential commodities and services. Para 4(d) of the Guidelines exempts telecommunication and internet services from the lockdown. This is in consonance with the National

Telecom Policy 2012 (**Annexure P-14** in the captioned writ) which recognizes the right to broadband connectivity as a “*basic necessity like education and health.*”

f) Following Respondent No. 2’s orders, all Union Territories and State Governments issued similar notifications declaring “lock-downs”. In Jammu & Kashmir too, orders under Section 144, Cr.P.C. were issued to restrict movement of the public across the Union Territory. Similar orders had already been issued for specific districts, prior to this, in order to contain the spread of COVID 19 (See **Annexures P-18 and P-19** in the Writ Petition).

5. Despite the widespread nature and the deleterious health, emotional, economic, social, and financial impact of COVID-19; and the lockdown that the country is under, Respondent No. 1 vide impugned order dated 26.03.2020 continued its policy (vide orders dated 04.03.2020 and 17.03.2020) of restricting mobile internet speed to 2G only.
6. It is respectfully submitted that in these conditions - a pandemic and a lock-down - the restriction of mobile internet speeds to 2G only is completely unreasonable. An effective and functional internet constitutes an essential infrastructure for preserving and protecting the constitutionally guaranteed right to health under Article

21. It is an essential tool to consume information and remain updated about the spread of the pandemic; stay in touch with family during the lockdown; conduct business; continue with school education; and access the judicial system.



Limitations of 2G technology

7. The restrictions of internet speeds of mobile phones (as opposed to fixed line connectivity) is important since as per the Telecom Regulatory Authority of India's own data (**Annexure P-17** in the Petition), Jammu and Kashmir had 1.03 crore wireless subscribers (necessary for mobile internet) compared to only 1.32 lakh wireline subscribers (necessary for fixed line internet) as on 30.12.2019. Thus a vast majority of the population *cannot* access 4G internet speeds at all, and is forced to rely on 2G speeds, which are completely inadequate in today's digital age.
8. It is submitted that 2G, or 2nd generation wireless telephone technology, permits the sending and receiving of messages (SMSs and MMSs) on the mobile phone and limited web browsing. India began its transition to 3G or 3rd generation internet services in 2008, and this was the first time that users could properly browse the internet, send emails, download videos, share photos, or use other smartphone technology. 3G and 4G services support far greater voice and data capacity, data transmission, and other internet applications (which has been detailed in **Annexures P-8 to P-12** of the Writ Petition).
9. Thus, it is submitted that the restriction of mobile

internet to 2G speeds greatly impedes the ability of people in Jammu and Kashmir to access the internet to download health advisories, communicate shortages, access information about lockdowns, carry out economic activity, and schooling like the rest of the country, violating their rights under Articles 14, 19, 21, and 21A of the Constitution.

Right to Health

10. The guarantee of life and personal liberty under Article 21 of the Constitution of India includes the right to health; and it is the constitutional obligation of the State to provide – or at least, not to inhibit the provision of – the essential *infrastructure* that makes this right effective, and not reduce it to a nullity. In the context of health, this Hon’ble Court has, through a series of decisions, recognised that the State is obliged to do “whatever is necessary” to provide adequate medical services, medical aid, and to ensure the creation and the sustaining of conditions congenial to good health (Kindly see ***Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165*** and ***Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37***). The right to health is a composite right, which includes medical care and health facilities as well (***CESC Ltd. v. Subhash Chandra Bose, (1992) 1 SCC 441***).

11. Thus, the right to health requires the State to take active measures to ensure the presence of necessary physical, and, by extension, digital, infrastructure. A well-functioning internet, especially in times of an epidemic such as COVID-19, is an essential part of this digital infrastructure that is required to make this right an effective reality. It is submitted that a combination of the advent of COVID-19 and the accompanying lock-down has created a situation where the right to health, for its effective fulfillment, is dependent on the availability of an effective and speedy internet.
12. The medical community, public health professionals, and doctors have made known their concerns, and the problems they are facing with 2G mobile internet (see **Annexures P-20 to P-22** of the Writ Petition), as explained below.
13. At 2G mobile internet speeds, the patients, doctors, and the general public of Jammu & Kashmir are unable to access the latest information, guidelines, advisories, and restrictions about COVID-19 that are being made available and continuously updated online, on a daily basis.
14. Various public health practitioners, medical professionals, and doctors have repeatedly expressed their concern about wasting precious time trying to

download the latest studies, protocols, manuals and advisories on treatment and management of COVID 19. In some cases, doctors are not able to access these resources at all, due to the internet speed being too slow to download heavy files.

15. Slow internet speeds also renders telemedicine or online video consultation impossible. These avenues are essential to achieve social distancing and reduce the number of in-patient visits to hospitals, for those desperate to meet doctors in order to understand their COVID-19 symptoms; or come in for treatment of other medical and psychological problems, including anxiety, which require counselling.
16. The constraints faced by doctors have a ripple effect on the entire population of Jammu & Kashmir, and violates the right to health, and the obligation of the State to do “whatever is necessary” to ensure public health, guaranteed under Article 21 of the Constitution.
17. It is thus submitted that a speedy internet is *essential* to the adequate fulfilment of the right to health, without which it would become *illusory* (see ***Union of India v Naveen Jindal, (2004) 2 SCC 510***). Notably, in the present case the State, is not being requested to create new infrastructure, or to use its budgetary allocation in specific ways to bolster the right to health. It is only

being asked not to *deprive* citizens in Jammu & Kashmir of facilities that are *already* available to Indians across the country - i.e., effective and speedy internet, an indispensable tool in the struggle against the COVID-19 epidemic. The restriction in respect of mobile internet speeds effectively amounts to a targeted roll-back of such rights in respects of the residents of Jammu & Kashmir

18. The right to internet connectivity has repeatedly been recognised by the Government of India as a basic necessity or an essential service to ensure the right to health – whether it is the National Telecom Policy, 2012; or Respondent No. 2’s “lockdown” Guidelines dated 24.03.2020 exempting “*telecommunications, internet services, broadcasting and cable services. IT and IT enabled Services only (for essential services) and as far as possible to work from home.*”)
19. This Hon’ble Court has stressed the importance and directed the use of technology in the anticipation, prevention and of disasters under the Disaster Management Act (see ***Swaraj Abhiyan v. Union of India, 2016 SCC Online SC 485***). Furthermore, the importance of technology, and the internet is also evident from the fact that to disseminate accurate information about the pandemic, Respondent No. 2 has

launched various laudable initiatives such as the Ministry of Health's COVID 19 dashboard and MyGovIndia's WhatsApp chatbot, which responds to queries and counters COVID-19 myths with text, infographics and videos that require access to fast internet. However, the residents of Jammu and Kashmir are unable to access potentially life saving information from these services due to the impugned order, thus violating their fundamental rights under Articles 14, 19, and 21 of the Constitution

The impugned order restricts the enjoyment of fundamental rights to education, livelihood, and access to justice during the COVID-19 outbreak

- 20.** The impugned order has directly impacted the enjoyment of various other fundamental rights in the specific context of the ongoing lockdown.
- 21.** Restricted internet speeds are directly impacting the ability of children of Jammu & Kashmir to exercise their fundamental right to education, guaranteed under Article 21A of the Constitution since schools there are unable to shift their mode of instruction online, like the rest of the country.
- 22.** 2G mobile internet speeds also makes it virtually impossible to follow the government mandated "work from home" policy, especially for businesses in the

Information Technology and ITES (IT Enabled Services) sector, thus affecting their rights under Article 19(1)(g) of the Constitution.

- 23.** Even access to justice has been affected, since, without fixed line internet connectivity, many people may be unable to approach the Hon'ble Jammu & Kashmir High Court through virtual modes of communication/video conference facilities for urgent relief,

Right to the freedom of speech and expression, freedom of press and internet access

- 25.** The freedom of speech and expression guaranteed under Article 19(1)(a) has been consistently interpreted to include the right of the public to know, receive, and impart information so as to make an informed choice on the issues touching us (***Ministry of Information and Broadcasting, v. Cricket Assn. of Bengal, (1995) 2 SCC 161***).

- 26.** This Hon'ble Court in ***Anuradha Bhasin v Union of India, (2020) SCC Online SC 25*** expressly recognised that expression through the internet has gained “contemporary relevance” and is one of the “major means of information diffusion”; and that the freedom of speech and expression and the freedom to conduct business through the medium of internet are integral parts of Article 19(1)(a) and 19(1)(g)

respectively.

27. Severe restrictions on the speed of internet services accompanied by a lockdown of movement, directly limits the right of the public to know the latest information about the spread of COVID-19, the measures being taken to address it, and the restrictions imposed on the general public. The impugned order has also resulted in unwarranted restrictions on the dissemination of essential medical information and updates by the State and doctors. Given the rapidity with which the situation is changing and developing, updates are being issued multiple times a day through online platforms such as “Twitter” and newspaper websites, which are becoming impossible to access for people in Kashmir in the absence of high speed internet. These updates include the location of testing centres, the nature and extent of restrictions on movement, the inclusion and exclusion of services in essential services, the nature of relief packages being announced by different ministries and institutions such as the Reserve Bank of India, the location of relief shelters, information regarding areas in which positive cases have been found which enables persons in the area to self isolate, voluntary contact tracing by keeping in touch with one and another, healthcare advisories

such as symptom tracking and advisories against taking certain medicines. Journalists play an important role in disseminating this information, but are hampered by limited mobile internet speeds in Jammu & Kashmir.

The impugned order is disproportionate, lacks any reasoned basis, and does not comply with the principles laid out in Anuradha Bhasin (supra)

28. Vide judgment dated 10.01.2020, this Hon'ble Court in *Anuradha Bhasin* (supra) directed Respondent No. 1 to review orders issued under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 ("**Telecom Suspension Rules**") periodically, to ensure that the communication shutdown was not permanent. It reiterated that all orders have to satisfy the test of proportionality and "state the material facts" and be supported by sufficient material to facilitate judicial review.

29. It is submitted that the present impugned order dated 26.03.2020 does not comply with the aforesaid bare minimum requirements, as is liable to be struck down.

30. Although the impugned orders justifies the restriction to 2G internet speeds through the interest of sovereignty of the State and public order, based on the "overall security situation" and the latest "reports of law

enforcement agencies”; it does not elaborate any further. The Order sets out no justification of why, seven months after the events of 05.08.2019, internet speed continues to be restricted in Jammu and Kashmir, especially in view of the changing scenario caused by the COVID-19 crisis and the national and Union Territory level lockdown (which includes the promulgation of the J&K Epidemic Disease (Covid-19) Regulations, 2020).

- 31.** The impugned order fails the test of proportionality, as:
- i. The restriction on mobile internet speeds does not bear a rational relationship to protecting security, as it is possible for perpetrators and terrorists to continue to engage in such activities using basic communication under 2G speeds.
 - ii. The measure also fails the necessity test as: (a) Respondent No.1 can always rely on intelligence inputs and antecedent reports to identify suspected persons and restrict and block their numbers. (b) Respondent No. 1 has already restricted the use of internet on pre-paid SIM cards on the ground that they can be obtained without proper verification. Thus, its own admission is that postpaid connections are unlikely to be used for illegal activities given their traceability. Therefore, there is no need to restrict to internet speed on postpaid

mobile connections. (c) The Union Territory is already in a state of a lockdown and movement is severely restricted due to the COVID outbreak thus reducing the possibility of any actions that can endanger public order. To the contrary, the absence of avenues of continuous updates about the situation as it unfolds and details of relief centres of the Government are more likely to endanger public order.

- iii. In view of the changed situation because of the spread of the COVID-19 pandemic, it is evident that the impugned Order fails the final prong of the constitutional standard, which requires that there must be a proportionate balance between the interests of the State, and the extent of the restrictions upon fundamental rights. Apart from restricting the right to know, without access to 4G internet, the right to health - in times of a pandemic - is effectively rendered illusory. In this context, a measure by the Government, reportedly for the security of persons, which threatens their survival, is indeed disproportionate.

- 32.** It is submitted that the Petitioners have demonstrated a prima facie case in favour of the restoration of the internet given that the mobile internet is indispensable to undertake any activity amidst a lockdown, is necessary to receive daily updates of the Government of

a developing situation and the limited availability of fixed line connections. It is submitted that the balance of convenience lies in favour of the restoration of internet since several safeguards such as a physical lockdown, the verification of pre-paid SIM cards, and strict law enforcement will prevent the misuse of internet services. Finally, irreparable injury will be caused to the people in Jammu and Kashmir in the absence of internet to mitigate further damage to the economy and education of students and to enable the free flow of information and social distancing.

- 33.** That the application has been made bona fide and in the interest of justice.

PRAYER

In the premises, it is most respectfully prayed that this Hon'ble Court may be pleased to

- a. Issue an order or direction directing Respondent No. 1 to restore the internet speed in mobile data services to 4G in the Union Territory of Jammu & Kashmir immediately, during the COVID-19 outbreak, and/or
- b. Pass such other orders as may be deemed fit in the facts and circumstances of this case.

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

Filed by:

Place: New Delhi

SHADAN FARASAT

Filed On: **30.03.2020**

ADVOCATE FOR PETITIONER



IN THE SUPREME COURT OF INDIACivil/~~Criminal~~/Original/~~Appellate~~ JurisdictionSLP/~~APPEAL~~/WP/~~TP~~/~~RP~~/~~CP~~ (CIVIL/~~CRIMINAL~~) No. _____ OF 2020**IN THE MATTER OF:**FOUNDATION FOR MEDIA PROFESSIONALPetitioner(s)
Appellant(s)

VERSUS

UT of JAMMU & KASHMIR & Anr

Respondent(s)

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DATE: 30 / 03 / 2020Sharan**Mr. Shadan Farasat**

Advocate for Petitioner(s)/Appellant(s)/Respondent(s)

Off: J-14 (Basement), Jangpura Extension,

New Delhi-110014,

Mob: +919818009824

AOR Code: 1985Name: - **Ravi Kumar Rahul** Email: -Clerk of Advocate **Shadan Farasat**Mob: - **+91-7838001284 & +91-8800515913**Identity Card No. **4482**

Email: -

IN THE MATTER OF:-

Foundation for Media Professionals

...Petitioner(s)

VERSUS

Govt. of U.T. of Jammu & Kashmir & Anr.


...Respondent(s)

VAKALATNAMA

I, Paranjay Guha Thakurta, aged about 64 years, S/o Late Pranab Guha Thakurta, the authorized representative of Foundation for Media Professionals having its registered office at A-101, Shatabdi Rail Vihar, Sector 62, Noida- 201301, Presently at Gurgaon, do hereby appoint and retain **Mr. Shadan Farasat**, Advocate on Record, of the Supreme Court to act and appear for us in the above Petition and on our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on our behalf in the said Petition and in application of Review, and to represent us and to take all necessary steps on our behalf in the above matter, I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this 29th day of March, 2020.

Accepted, Identified, Satisfied & Certified



PETITIONER(s)

(Mr. Shadan Farasat)
ADVOCATE ON RECORD
SUPREME COURT OF INDIA

MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India
New Delhi

Sir,

Please enter my appearance on behalf on the Petitioner(s) /Appellant(s)/
Respondent(s) /Intervenor in the matter above mentioned.

Dated this 29th day of March, 2020.

Yours faithfully,



(Mr. Shadan Farasat)

Advocate for Petitioner(s)/Appellant(s)/Intervenor(s)/Respondent(s)

Off: J-14 (Basement), Jangpura Extension,

New Delhi-110014, Mob: +91-9818009824

AOR Code: 1985, e-mail: shadanfarasat@gmail.com