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Internet as a Medium of Freedom of Expression

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Recently, the Supreme Court gave a judgement in response to petitions filed, arguing the Internet shutdown and curbing of other civil liberties in the Jammu and Kashmir (J&K).

The three-judge bench rapped the government for refusing to produce before the Court orders imposing restrictions on the Internet and enforcing **section 144 Criminal procedure code** (CrPc) in J&K.

The Supreme Court clarified that **Right to access the Internet** and released guidelines on imposition of section 144 of CrPC. This is particularly important since India has now seen the longest Internet blackout in any democracy in the world.

- This judgement builds on a **Kerala High Court judgment** that declared the right to the Internet a fundamental right.
- While the petitions were specifically about J&K, the questions raised in them have acquired country-wide resonance after protests against the **Citizenship Amendment Act**.
- At a larger level, the ruling sets precedents that make the Internet shutdown process more transparent and tries to ensure that there can't be indefinite shutdowns.

Laws pertaining to Internet Shutdown

- Home Affairs Departments in the states are mostly the authorities that enforce shutdowns, drawing powers from the **Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017**.
Powers have now been given to the Secretary of the Union Government, Secretary of the state government, to issue orders related to Internet shutdown.
- **Section 144 of the Code of Criminal Procedure, 1973** has enabled many of the shutdowns in the recent past, especially until the time the telecom suspension Rules came into force in 2017.

- The **Indian Telegraph Act, 1885**, allows central and state governments to prevent the transmission of messaging during a “public emergency or in the interest of public safety”, or “in the interests of the sovereignty and integrity of India, the security of the state”.
- The **Information Technology Act** (India’s principal information technology sector law), has provided limited power to the government to issue individual web content blocking orders, instead of a larger suspension of internet itself.

Highlights of the Judgement

Internet as a medium of information diffusion

- The Supreme Court **refrained** from the view on declaring the right to access the Internet as a fundamental right but still went on to make the **Internet as an integral part of the freedom of expression** guaranteed under **Article 19 (1) of the Constitution**.
- SC noted that the Internet **as a medium is a major means of information diffusion** and that freedom to receive information is vital to expression.
- It has also pointed out that in a globalised world, restricting the Internet was to restrict the **freedom to trade and commerce, protected by Article 19(1)(g)**.

Clarity on reasonable restriction

- Any restrictions on freedoms guaranteed under Article 19, would have to be in accordance with the **reasonable restrictions**, be it an Internet ban or a Section 144 order.
- SC emphatically stated that the powers under this section **“cannot be used to suppress the legitimate expression of opinion or grievance or exercise of any democratic rights”**
- However, such restriction will have to survive the **test of proportionality**, that is, the restriction should be proportionate to the necessity for such a measure.
- At the same time, it cautions against the **“excessive utility”** of the proportionality doctrine in matters of national security.

Check and balances regarding section 144 of CrPc

- SC held that there can be **no secret orders** which sought to impose an Internet shutdown or Section 144 in any area.
- The government is bound to **publish all orders** it passes regarding such restrictions so that they can be challenged in a court of law.
- It also held that such restrictions **cannot extend beyond necessary duration** nor could it be indefinite.
- The judgement specifies a time-frame for a **review of such order (seven days)**.

Issues Related to the Judgement

- It states categorically that an indefinite ban on the Internet is impermissible, but fails to direct the restoration of services in J&K.
- By stating that any order for suspension of the Internet can be judicially reviewed, but effectively providing no remedy when such a review came up before it. Thus, the Court has only left the door open to more litigation.
- SC's judgment also **does not provide immediate relief**. It leaves the door open for the executive to argue that these orders are justified on security grounds, and for another, perhaps prolonged, the legal process for the full resumption of rights.

Conclusion

The state is bestowed with the responsibility to provide security to its citizens, but the doctrine of constitutionalism calls for a limited government. Therefore, a modern democratic state like India must strive to strike a balance between liberty and security, because security without liberty is autocracy and liberty without security is anarchy.

Drishti Mains Question

A modern democratic state should try to strike a balance between security and liberty. Analyse