

Disconnecting Rights: Internet Shutdowns Proportionality and Human Rights Accountability in India after the Telecommunications Act 2023

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Abstract: India's law of internet shutdowns now rests on section 20 of the Telecommunications Act 2023 and the Telecommunications Temporary Suspension of Services Rules 2024. The new Rules improve the previous regime by requiring publication, clearer reasons, defined geography and duration, a twenty four hour transmission period, and last resort consideration. They retain, however, an executive review structure and a fifteen day ceiling for each order, while leaving the intensity of proportionality review and the evidential burden uncertain. This article argues that the constitutional problem is therefore no longer the absence of a structured test but the risk that proportionality becomes a recital rather than a discipline. It develops an evidence forcing six step test that separates legality, proper purpose, rational connection, necessity, tailoring, and balancing with safeguards. The test allocates to the State the burden of producing order specific evidence and applies to the Jammu and Kashmir mobile data restriction reviewed in Foundation for Media Professionals. The article also reconciles Anuradha Bhasin with Pragya Prasun: digital access is neither an absolute freestanding entitlement nor merely a convenience, but an intrinsic component of Article 21 and a medium through which Articles 14 and 19 are exercised. Comparative decisions from the ECOWAS Court, Indonesia, and the European Court of Human Rights show the importance of distinguishing territorial shutdowns from throttling and platform or content blocking. The article proposes staged review at twenty four, forty eight, and seventy two hours, essential service continuity, publication, and separate compensatory and structural remedies.

Keywords: internet shutdowns, proportionality, digital access, Article 21, judicial review

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Hakların Bağlantısını Kesmek: 2023 Telekomünikasyon Yasası Sonrası Hindistan'da İnternet Kapatmaları, Orantılılık ve İnsan Hakları Hesap Verebilirliği

Özet: Hindistan'da internet kesintilerine ilişkin güncel hukuk, 2023 Telekomünikasyon Kanunu'nun 20. maddesi ile 2024 Telekomünikasyon Hizmetlerinin Geçici Olarak Askıya Alınması Kuralları'na dayanmaktadır. Yeni Kurallar; kararların yayımlanması, gerekçelerin açıklanması, coğrafi alan ve sürenin belirlenmesi, kararın yirmi dört saat içinde inceleme komitesine iletilmesi ve kesintinin son çare olarak değerlendirilmesi bakımından önceki rejimi geliştirmiştir. Bununla birlikte inceleme mekanizması yürütme organı içinde kalmakta, her karar için on beş günlük üst sınır korunmakta ve orantılılık incelemesinin yoğunluğu ile ispat yükü belirsizliğini sürdürmektedir. Bu çalışma, temel sorunun artık yapılandırılmış bir testin yokluğu değil, orantılılığın gerçek bir denetim yerine biçimsel bir ifadeye dönüşmesi olduğunu savunmaktadır. Çalışma; kanunilik, meşru amaç, rasyonel bağlantı, gereklilik, dar kapsamlı düzenleme ve güvencelerle dengeleme aşamalarından oluşan, devleti somut kanıt sunmaya zorlayan altı basamaklı bir test geliştirmektedir. Test, Foundation for Media Professionals kararında incelenen Jammu ve Keşmir mobil veri hız kısıtlamasına uygulanmaktadır. Çalışma ayrıca Anuradha Bhasin ile Pragma Prasun kararlarını uzlaştırmaktadır: dijital erişim mutlak ve sınırsız bağımsız bir hak değildir; ancak Anayasa'nın 21. maddesinin asli bir unsurudur ve 14. ile 19. maddelerdeki hakların kullanılmasını sağlayan bir araçtır. Önerilen model; yirmi dört, kırk sekiz ve yetmiş iki saatlik aşamalı denetim, temel hizmetlerin sürekliliği, yayımlama yükümlülüğü ve tazminat ile yapısal giderimlerin ayrılmasını içerir.

Anahtar Kelimeler: internet kesintileri, orantılılık, dijital erişim, 21. madde, yargısal denetim.

1. Introduction

Internet shutdowns restrict an infrastructure through which several constitutional activities occur at once. They may prevent a journalist from transmitting news, a patient from obtaining medical advice, a worker from receiving payment, a student from joining a class, and a resident from verifying a public safety warning. The legal character of the measure therefore differs from a prosecution for an unlawful message or an order directed to a particular item of content. A territorial network suspension disables lawful and unlawful uses indiscriminately unless its design preserves specified services.

Indian law protects speech through the internet under Article 19(1)(a) and trade or occupation through the same medium under Article 19(1)(g). Restrictions must satisfy Articles 19(2) or 19(6). Article 21 protects life and personal liberty, while Article 14 requires equal treatment and guards against arbitrary state action.¹ At the international level, Article 19 of the International Covenant on Civil and Political Rights protects the freedom to seek, receive, and impart information through any media, subject to restrictions that are provided by law and necessary for an enumerated purpose.² These guarantees do not make connectivity absolute. They do require the State to justify the particular scope, duration, and design of an interruption. The scale of the practice makes the question pressing. Access Now and the KeepItOn coalition recorded 84 shutdowns in India in 2024 and 65 in 2025.³ Those figures depend on the coalition's definition and verification method

¹ Constitution of India 1950, arts. 14, 19(1)(a), 19(1)(g), 19(2), 19(6), and 21.

² International Covenant on Civil and Political Rights, adopted December 16, 1966, 999 UNTS 171, arts. 19(2)-19(3); Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34 (September 12, 2011), paras. 21-36.

³ Access Now and KeepItOn Coalition, *Emboldened Offenders, Endangered Communities: Internet Shutdowns in 2024 (2025)*, 8, 23-25; Access Now and KeepItOn Coalition, *Rising Repression Meets Global Resistance: Internet Shutdowns in 2025 (2026)*, country findings on India.

and should not be treated as an official administrative series. They nevertheless show why case by case review cannot proceed on the assumption that suspension is an unusual event whose institutional design matters little. The governing framework changed materially after the Supreme Court's decision in *Anuradha Bhasin v Union of India*. The Court required publication, rejected indefinite suspension, and subjected restrictions to necessity and proportionality.⁴ Parliament then enacted section 20 of the Telecommunications Act 2023, and the Union Government made the Telecommunications Temporary Suspension of Services Rules 2024.⁵ The 2024 Rules contain safeguards absent from the original 2017 text, but most review remains internal to the executive. The question is whether the new scheme converts the language of proportionality into an order specific evidential duty.

This article makes three contributions. First, it places the 2024 Rules in a provision by provision comparison with the 2017 Rules as amended in 2020. Second, it develops an evidence forcing six step test. The test adds to the familiar four stage proportionality structure by separating threshold legality from proper purpose and by treating publication, essential service continuity, review, and remedy as part of constitutional balancing rather than administrative afterthoughts. Third, it applies that test to the order maintaining mobile data at 2G speed across Jammu and Kashmir that was examined in *Foundation for Media Professionals v Union Territory of Jammu and Kashmir*.⁶ The application exposes the difference between citing a security objective and proving that the chosen territorial and technical restriction is necessary.

The argument is deliberately narrower than a claim that every shutdown is unlawful. A short, geographically confined, service specific interruption may be capable of justification where an imminent and serious threat cannot be addressed through a less restrictive measure. The burden rests on the State because it controls the threat material, the network design, and the reasons for choosing one intervention over another. That allocation responds to a central weakness in Indian proportionality doctrine: a court may recite the test while deferring to unsupported executive assertions.

2. Concepts Scope and Method

2.1 Four technically and legally distinct measures

The term internet shutdown should not collapse different interventions. This article uses four categories.

Territorial network shutdown means an intentional state directed disruption that renders internet or electronic communications inaccessible or effectively unusable for a population within a geographic area. It may affect mobile data, fixed broadband, voice, or several services together.

Throttling means a deliberate reduction of bandwidth or network quality. The user remains nominally connected, but ordinary functions such as video consultation, transfer of evidential files, interactive education, and secure applications may become impracticable. A 2G restriction is therefore not a complete black-out, but it is a serious access restriction requiring its own evidence.

Platform blocking prevents access to an entire service such as YouTube or a social media platform. It has wide collateral effects but leaves the rest of the network available.

⁴ *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637, paras. 96, 104, 108, 152.

⁵ Telecommunications Act 2023, sec. 20(2)(b); Telecommunications (Temporary Suspension of Services) Rules 2024, rr. 3-5.

⁶ *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir* (2020) 5 SCC 746, paras. 1, 4-9, 23-24.

Content blocking targets identified information, a URL, account, or resource through a distinct legal process. In India, section 69A of the Information Technology Act 2000 and the 2009 Blocking Rules govern specified online information.⁷ Content blocking may itself be unlawful or disproportionate. Its relevance here is comparative: where identified content creates the alleged danger, a territorial shutdown normally demands an explanation of why a targeted process cannot address it.

The distinctions matter because less restrictive does not mean harmless. Platform blocking suppresses lawful users of the platform; throttling can make health and education services unusable; and targeted blocking can be opaque. The proper inquiry compares feasible measures against the same concrete objective and accounts for displacement effects. A platform restriction, for example, may shift harmful communication to closed services while burdening public counter speech.

2.2 Method and source selection

The research uses doctrinal and normative legal analysis. The doctrinal materials comprise the Constitution, the Telecommunications Act 2023, the 2017 and 2024 Rules, Supreme Court and High Court decisions, and India's treaty commitments. The normative inquiry asks what evidential and institutional conditions are needed for those rules to protect rights in practice. Limited empirical research is used to test factual assumptions about effects and effectiveness; it does not convert the study into a quantitative survey.

Sources were selected by a stated relevance rule. Indian cases were included when they concern internet suspension, digital access, structured proportionality, the burden of justification, publication, or public law remedies. Statutes and delegated legislation were taken from the instruments governing suspension and targeted blocking. Scholarly works were selected because they offer competing accounts of legal control, proportionality, or recent Indian practice. Comparative decisions were selected to represent three different measures: a territorial shutdown in Togo, throttling and shutdown in Papua and West Papua, and platform or domain blocking in Turkey. Reports were used for documented effects or implementation data, not as substitutes for legal or scholarly argument. The choice produces limitations. Many shutdown orders are not published, and the public text of an order may omit the intelligence on which the executive relied. Shutdown datasets use different definitions and may not capture informal or highly local disruptions. The case application below therefore does not decide facts unavailable to the public. It asks whether the published reasons and the material described in the judgment discharge a public law burden. Confidential material may sometimes be considered by a court, but confidentiality cannot erase the duty to disclose a gist adequate for challenge.

2.3 The scholarly disagreement and the article's position

De Gregorio and Stremlau reject a binary debate between keeping networks on in every circumstance and permitting unrestricted state control. They argue that legality, legitimacy, proportionality, transparency, and review may constrain shutdowns, while warning that law has limited effect when governments avoid legal process, legitimate aims are interpreted broadly, or enforcement is weak.⁸ This article accepts their

⁷ Information Technology Act 2000, sec. 69A; Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules 2009; *Shreya Singhal v. Union of India* (2015) 5 SCC 1, paras. 109-15.

⁸ Giovanni De Gregorio and Nicole Stremlau, "Internet Shutdowns and the Limits of Law," *International Journal of Communication* 14 (2020): 4226-27, 4232-38.

institutional warning and their refusal to treat proportionality as self executing. It differs by locating the answer primarily in domestic evidential burdens and staged review. International proceduralisation is valuable, but an Indian court can require the issuer to identify the threat, alternatives, predicted benefit, and rights cost without waiting for a new international instrument.

Aparna Chandra argues that the Supreme Court's adoption of structured proportionality has been conceptually inconsistent. In her account, low evidential scrutiny and strong deference allow necessity to be bypassed, making proportionality a bridge that may lead nowhere.⁹ Shruti Bedi likewise treats burden of proof as decisive: a formal test offers insufficient protection if the State's assertions are accepted without proof or uncertainty is placed on the rights holder.¹⁰ This article accepts both critiques. It therefore treats evidence as part of each stage, not as a general request for a government affidavit at the end of analysis. The more extensive, longer, or more essential the affected service, the stronger the State's evidential burden.

Taniya Malik combines doctrinal analysis with shutdown data and orders from 2021 to 2024. Her study finds repeated noncompliance with statutory and judicial guidelines and stresses real time publication, competent authority, recorded reasons, and last resort use.¹¹ This article accepts Malik's implementation diagnosis but proposes a different contribution. Rather than another catalogue of departures, it specifies what a reviewing body must demand at each stage and demonstrates that method against one order. It also analyses the final 2024 Rules and *Pragya Prasun*, developments that alter the legal baseline.

3. The Statutory Regime Before and After 2024

3.1 Statutory authority

The 2017 Rules were made under section 7 of the Indian Telegraph Act 1885 and operated against the threshold in section 5(2): a public emergency or an interest of public safety, followed by satisfaction that action was necessary or expedient for specified purposes. Section 20(2)(b) of the Telecommunications Act 2023 now authorises the Central or State Government, or a specially authorised officer, to suspend a telecommunication service or class of services on the occurrence of a public emergency or in the interest of public safety, where the statutory satisfaction and enumerated grounds are met.¹²

The phrases public emergency and public safety are thresholds, not additional entries in a list of ordinary administrative objectives. In *People's Union for Civil Liberties v Union of India*, while construing section 5(2) of the Telegraph Act in the interception context, the Supreme Court treated the occurrence of public emergency or the interest of public safety as a condition precedent.¹³ Section 20 retains that architecture. A recital of public order cannot substitute for facts showing the threshold condition. The Bharatiya Nagarik Suraksha Sanhita 2023 also contains a general urgent order power in section 163, replacing section 144 of the Code of Criminal Procedure.¹⁴ A general public order power should not displace the specific telecom suspension

⁹ Aparna Chandra, "Proportionality in India: A Bridge to Nowhere?" *University of Oxford Human Rights Hub Journal* 3 (2020): 58-59, 66-67, 84-86.

¹⁰ Shruti Bedi, "Proportionality and Burden of Proof: Constitutional Review in India," *Indian Journal of Constitutional Law* 10 (2021): 75-77, 88-91.

¹¹ Taniya Malik, "Freedom of Internet and State Control: A Case Study on Internet Shutdowns in India," *Masaryk University Journal of Law and Technology* 19 (2025): 105-21, <https://doi.org/10.5817/MUJLT2025-2-1>.

¹² Indian Telegraph Act 1885, sec. 5(2); Telecommunications Act 2023, sec. 20(2)(b).

¹³ *People's Union for Civil Liberties v. Union of India* (1997) 1 SCC 301, paras. 27-30.

¹⁴ Bharatiya Nagarik Suraksha Sanhita 2023, sec. 163.

procedure. *Anuradha Bhasin* required reasoned use of section 144 and rejected its use to suppress legitimate expression, but the existence of section 163 does not create an alternative route around section 20 and the 2024 safeguards.¹⁵

Issue	2017 Rules as amended in 2020	2024 Rules	Legal significance
Source of power	Telegraph Act 1885 sections 5 and 7	Telecommunications Act 2023 section 20	New statutory basis; the public emergency or public safety threshold remains
Ordinary issuer	Union Home Secretary or State Home Secretary	Same competent authorities	No material independence change
Urgent substitute	Duly authorised officer not below Joint Secretary; confirmation within 24 hours or lapse	Substantially retained	Twenty four hours is a confirmation deadline, not a presumption that a shutdown is valid for a day
Written reasons	Reasons required	Order must be published and clearly state reasons	Publication is an express textual gain; mode and accessible repository remain unspecified
Scope	No express geographic tailoring in original text	Order must address specific reasons and identify clearly defined geographic areas	Stronger fit requirement, but no express duty to identify affected populations or essential services
Service selection	Direction could concern telecom services; no structured comparison of service classes	Section 20 permits a service or class of services, but rule 3 does not create a detailed service selection test	The issuer should state why mobile data, fixed broadband, voice, or another class is included; the Rules should not be described as containing a complete service specific safeguard
Duration	No original maximum; 2020 amendment capped an individual order at 15 days	Specific duration not exceeding 15 calendar days	The cap is an outer limit, not evidence of necessity; successive orders can reproduce an indefinite restriction
Alternatives	No express last resort clause	Issuer must consider whether the objective can be achieved by other reasonable means	Important necessity requirement; reasons should identify the alternatives actually considered
Transmission for review	By the next working day	Within 24 hours	Removes delay caused by weekends or holidays
Review timing	Within 5 working days	Within 5 calendar days	Modest acceleration; serious rights harm can still occur before review
Review body	Three senior executive officials at Union or State level	Composition substantially retained	Administrative review remains internal to the executive
Review outcome	Finding on statutory conformity	Express power to set aside a nonconforming order and direct restoration	Clearer remedial authority, but no participation by affected persons and no independent member

¹⁵ *Anuradha Bhasin*, paras. 129-34, 151-52.

Table 1. distinguishes textual change from continuity.

3.2 Provision by provision comparison

The comparison corrects two possible overstatements. First, publication and geographic definition are material changes, but much of the institutional design continues. Second, the authority to suspend a service or class of services does not itself prove that the least restrictive class was chosen. A reasoned order should compare mobile data, fixed broadband, voice, SMS, and identified applications when technically relevant.

The fifteen day provision requires particular care. *Anuradha Bhasin* held that a temporary power cannot support an indefinite suspension and required periodic review.¹⁶ The 2020 amendment and the 2024 Rules set a maximum for each order, not a cumulative maximum for successive orders. Repeating orders can therefore reproduce the vice of indefiniteness. Each continuation should be treated as a new restriction requiring fresh facts, a fresh alternatives analysis, and disclosure of what the earlier restriction achieved.

3.3 Administrative review and the case for independent review

The existing Review Committee performs administrative review. At Union level it consists of the Cabinet Secretary, the Secretary in charge of Legal Affairs, and the Secretary of Telecommunications. At State level it consists of the Chief Secretary, the legal affairs secretary, and another secretary who is not the Home Secretary.¹⁷ This separation from the issuing Home Secretary is useful, but all members remain within the executive. Administrative review should therefore be named accurately and preserved as the first layer rather than presented as independent review.

An independent layer would examine the same record without institutional responsibility for the policy. Independence can be supplied by a judicial member or a body protected by appointment and tenure rules. The proposal in section 9 does not require a judge to authorise the first minutes of every emergency measure. It requires the evidential basis to leave the issuing chain quickly and predictably.

4. Rights and the Status of Digital Access

4.1 Articles 19 and 21 after *Anuradha Bhasin* and *Pragya Prasun*

Anuradha Bhasin did not declare a freestanding fundamental right to the internet. It held that speech and expression through the internet enjoy Article 19(1)(a) protection and that trade or business through the internet enjoy Article 19(1)(g) protection.¹⁸ That formulation identifies the medium through which enumerated freedoms are exercised.

The legal position developed in *Pragya Prasun v Union of India*, decided on 30 April 2025. The case concerned inaccessible digital KYC processes experienced by acid attack survivors and persons with visual disabilities. Paragraph 17 states that, as essential services, governance, education, health care, and economic opportunity are increasingly mediated through digital platforms, Article 21 must be understood in light of those

¹⁶ Ibid., paras. 108, 152; Temporary Suspension of Telecom Services (Amendment) Rules 2020, r. 2A.

¹⁷ Telecommunications (Temporary Suspension of Services) Rules 2024, rr. 5(1)-5(3).

¹⁸ *Anuradha Bhasin*, para. 152.

conditions. Read with Articles 14, 15, and 38, the State's obligation extends to accessible and inclusive digital infrastructure; the Court described the right to digital access as an intrinsic component of life and liberty.¹⁹

The context limits and strengthens the proposition. *Pragya Prasun* is not authority for unlimited bandwidth on demand, nor did it adjudicate a security based suspension order. Its holding arose from disability exclusion and the positive duty to make essential digital services accessible. But its reasoning cannot be confined to interface design. When the State deliberately disables access to the same essential services, Article 21 is engaged. The appropriate synthesis is that digital access is a constitutionally protected component of Article 21 and a medium for Articles 19 and 14, while restrictions remain possible if they satisfy the applicable limitation standards.

This account also responds to De Gregorio and Stremlau's warning that access, technology, and human rights are often conflated.²⁰ Recognition does not settle limitation. A right may be fundamental without being absolute. The analytical task is to identify the protected interest, the lawful grounds for restriction, and the intensity of justification.

4.2 Equality and differential burden

A formally territorial measure distributes harm unevenly. A household with fixed broadband, private transport, cash reserves, and alternative professional networks may adapt. A person whose wages, ration entitlement, remittance, assistive technology, or medical contact depends on mobile data may not. *Pragya Prasun* directs attention to disability, rural location, age, economic disadvantage, and linguistic exclusion.²¹ Article 14 analysis should therefore ask both whether the order draws an arbitrary line and whether its design ignores predictable unequal burdens.

This does not mean that every unequal effect invalidates an emergency order. It means that essential service continuity and reasonable accommodation belong inside tailoring and balancing. If a hospital network, accessible KYC route, emergency alert channel, or welfare portal can remain available without materially impairing the security objective, excluding it is evidence of overbreadth.

4.3 Demonstrated effects and claims of effectiveness

Evidence of rights harm should be specific. Human Rights Watch and the Internet Freedom Foundation conducted more than fifty interviews across seven Indian states and Union Territories between July 2022 and February 2023. Their report documents interrupted work, wages, food related welfare services, education, health access, and journalism.²² A 2025 study of postgraduate medical trainees in Manipur reported disruption to academic work and access to online learning resources during the shutdown.²³ The Indian Council for Research on International Economic Relations estimated economic loss from Indian shutdowns

¹⁹ *Pragya Prasun v. Union of India*, Writ Petition (Civil) No. 289 of 2024, Supreme Court of India, judgment of April 30, 2025, paras. 15-18, especially para. 17.

²⁰ De Gregorio and Stremlau, "Internet Shutdowns," 4226-27.

²¹ *Pragya Prasun*, para. 17.

²² Human Rights Watch and Internet Freedom Foundation, "No Internet Means No Work, No Pay, No Food": Internet Shutdowns Deny Access to Basic Rights in "Digital India" (June 14, 2023), methodology and chapters on food and livelihood, education, and health.

²³ S. Jyothi et al., "Effect of Internet Shutdown on Postgraduate Trainees in Manipur" (2025), results and discussion, PubMed Central article PMC11801777, <https://pmc.ncbi.nlm.nih.gov/articles/PMC11801777/>.

between 2012 and 2017 using state level traffic and output data, while cautioning that measurable loss does not capture every welfare effect.²⁴

Effectiveness is not self proving. Jan Rydzak's analysis of political events and shutdowns in India found a stronger association between shutdowns and increased violent collective action than between shutdowns and nonviolent mobilisation.²⁵ Association does not prove that a particular shutdown caused violence; authorities may impose shutdowns where violence is already likely. It does defeat a presumption that disconnection necessarily calms unrest. The issuer should produce context specific evidence and consider whether a blackout removes corrective information or displaces coordination offline.

Alternatives also affect other rights. Content removal can suppress lawful speech and requires procedural safeguards. Targeted arrests engage liberty and due process. Curfews restrict movement and assembly. Platform blocking has extensive collateral effects. A rights preserving analysis does not select an alternative merely because it is more technologically precise. It compares effectiveness, legal authority, rights costs, and safeguards against the same threat.

5. Proportionality and the Burden of Justification

5.1. The doctrinal foundation

In *Modern Dental College and Research Centre v State of Madhya Pradesh*, the Supreme Court set out four components: a proper purpose, rational connection, necessity in the absence of a less restrictive but equally effective measure, and proportionality in the strict sense between the importance of the purpose and the social importance of preventing the rights limitation.²⁶ The relevant discussion is in paragraphs 57 to 65, not merely at the opening page of the report.

The case supplies a structure but also a warning. Chandra shows that the Court stated the test and then largely sidestepped its application to the disputed regulatory choices.²⁷ In *K S Puttaswamy v Union of India*, different opinions used related formulations of legality, legitimate aim, proportionality, and safeguards.²⁸ In *Internet and Mobile Association of India v Reserve Bank of India*, the Court accepted the regulator's power but set aside the circular that denied regulated entities access to banking services for virtual currency activity, emphasising the absence of demonstrated harm to regulated entities and examining proportionality under Article 19(1)(g).²⁹ That authority belongs to the proposition about evidence and economic restriction; it should not be supported by a citation to the 2019 Aadhaar judgment.

Bedi and Chandra identify why allocation matters. If the petitioner must disprove a threat described in files held by the State, necessity becomes practically unreviewable. If the State must identify the facts, causal inference, alternatives, and predicted benefit, the test creates a culture of justification.³⁰ Shutdown review

²⁴ Indian Council for Research on International Economic Relations, *The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India* (2018), 6-9, 42-48.

²⁵ Jan Rydzak, *Of Blackouts and Bandhs: The Strategy and Structure of Disconnected Protest in India* (Stanford Global Digital Policy Incubator, 2019), 16-22.

²⁶ *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353, paras. 57-65, especially para. 60.

²⁷ Chandra, "Proportionality in India," 66-67.

²⁸ *K. S. Puttaswamy v. Union of India* (2017) 10 SCC 1, paras. 180, 310-25, 638.

²⁹ *Internet and Mobile Association of India v. Reserve Bank of India* (2020) 10 SCC 274, paras. 180-81, 194-202, 223-26.

³⁰ Bedi, "Proportionality and Burden of Proof," 75-77, 88-91; Chandra, "Proportionality in India," 58-59, 84-86.

should adopt the latter approach because the measure is broad, the evidence is asymmetrically held, and loss may be complete before ordinary litigation is heard.

5.2. An evidence forcing six step test

The proposed test contains six distinct questions.

Step one legality. The order must identify the statutory provision, competent authority, threshold public emergency or public safety condition, enumerated purpose, service or class, geography, start and end time, and recorded reasons. It must be published promptly. An unpublished order prevents meaningful challenge and fails the accessibility dimension of legality.

Step two proper purpose. The purpose must be one permitted by section 20 and Articles 19(2) or 19(6), and it must be sufficiently important to justify the scale of interference. Public order is not synonymous with administrative convenience, examination management, criticism, or every breach of law. The order must describe a proximate and serious risk.

Step three rational connection. The State must explain how disabling the selected network function in the selected area is expected to reduce the identified risk. A general statement that social media can spread rumours does not explain why fixed broadband, mobile data, voice, or an entire district must be affected.

Step four necessity. The decision maker must identify feasible alternatives and give reasons for rejecting them. Possibilities may include action against identified incitement, public correction, emergency messaging, geographic micro zoning, a shorter restriction, exclusion of fixed lines, or legally authorised content measures. The comparison should consider effectiveness and the rights costs of each option.

Step five narrow tailoring. The order must minimise geography, duration, affected service, and population. A fifteen day ceiling does not answer why the order needs fifteen days. Renewal requires new material. Throttling and partial restrictions also require proof that the selected technical level allows essential lawful use or that further accommodation is infeasible.

Step six balancing and safeguards. The expected security benefit must outweigh the residual rights harm after tailoring. The analysis must include health, education, livelihood, disability access, press activity, elections, assembly, and emergency communication where relevant. Publication, continuity arrangements, administrative and independent review, preservation of records, restoration triggers, and effective remedies are part of this stage.

Each step has an evidential output. A reviewing court should be able to locate the supporting document, not merely the conclusion, for the threshold event, the causal link, alternatives, scope, and balancing. Sensitive intelligence may justify limited redaction, but the public order and judicial record must disclose the gist and the non-sensitive reasoning.

6. Applying the Test to an Actual Restriction

6.1 The order examined in *Foundation for Media Professionals*

Foundation for Media Professionals concerned orders that limited mobile internet in Jammu and Kashmir to 2G during the COVID 19 pandemic. The order dated 27 April 2020 continued speed restrictions across the Union Territory while fixed line internet remained available with restrictions. The Government relied on terrorism, infiltration, the use of the internet for incitement and coordination, and recent security

incidents. Petitioners relied on the effect of 2G on health information, online education, business, and journalism and proposed regional trials or restoration outside problematic areas.³¹

The Supreme Court recognised that the controversy implicated national security and human rights. It did not itself decide to restore 4G. It constituted a Special Committee comprising the Union Home Secretary, the Union Telecommunications Secretary, and the Chief Secretary of Jammu and Kashmir to examine the contentions and the alternatives.³² The solution is directly relevant to deference: the Court demanded an additional decision process, but the body remained executive and the judgment supplied no public merits determination of the restriction.

6.2 Six step assessment

Legality. The order used the 2017 telecom suspension framework and was formally time limited. The record discussed in the judgment identified the issuing authority and security basis. The legality concern was less the absence of any power than the adequacy of review and the repeated territorial continuation. A court applying the proposed test would also require timely public access to the order and prior Review Committee findings.

Proper purpose. Countering terrorism, incitement, and threats to life and security is sufficiently important and fits the statutory grounds. This step is satisfied at the level of purpose. It does not decide the remaining questions.

Rational connection. High speed mobile data can facilitate rapid transmission of video, encrypted files, and mass communication. That establishes a plausible connection. The State still needed to show why the connection applied across the whole Union Territory rather than districts with identified incidents. The petitioners' proposed geographic trial made that question concrete.

Necessity. The public record did not demonstrate why district differentiation, monitored 4G trials, targeted restrictions in identified areas, or stronger action against specified misuse could not achieve the purpose with less harm. The availability of fixed line service did not answer necessity because access to fixed broadband was uneven and mobility restrictions during the pandemic increased reliance on mobile service. The State bore the burden of comparing options.

Narrow tailoring. A 2G limit was narrower than a complete blackout but remained severe for video education, telemedicine, transfer of large journalistic files, and contemporary applications. Territory wide application weakened geographic fit. Repeated short orders also risked turning formal temporariness into prolonged restriction. Tailoring was not demonstrated merely by labelling the measure a speed restriction.

Balancing and safeguards. The pandemic increased both security concerns and rights costs. Health and education burdens were not incidental; they were central to the conditions in which the order operated. The Special Committee was a procedural improvement, but it did not cure the absence of a public, independent assessment or provide immediate relief. On the public record, the order would not pass the proposed test without additional evidence explaining territory wide necessity, technical alternatives, essential service performance, and restoration criteria.

³¹ *Foundation for Media Professionals*, paras. 4-9, 18-22.

³² *Ibid.*, paras. 23-24 and operative directions.

This conclusion is deliberately evidential. It does not assert that confidential security facts did not exist. It states that constitutional validity cannot rest on facts that affected persons cannot meaningfully answer and a court does not independently test. The application shows the test's addition to existing law: it converts a general direction to consider proportionality into a record of propositions, evidence, alternatives, and conclusions.

7. International Law and Comparative Decisions

7.1 Legal status of international materials

The ICCPR is a treaty binding on India at the international level. Articles 2 and 19 require respect for protected expression and effective domestic measures, subject to the Covenant's limitation test.³³ The Covenant does not automatically displace contrary legislation in Indian courts. Consistent domestic law may be interpreted in light of international obligations, and international standards are especially persuasive where they fill rather than contradict a statutory or constitutional gap.³⁴

Other materials have different force. Human Rights Committee General Comments are authoritative interpretive guidance from the treaty body but are not treaties or binding domestic judgments. Human Rights Council resolutions, Special Rapporteur reports, and the 2011 Joint Declaration are soft law or expert materials. The OHCHR 2022 report is an evidential and interpretive report, not an adjudication.³⁵ Their value lies in reasoned guidance on legality, necessity, proportionality, access to remedy, and the effects of shutdowns. The article does not present them as independently binding Indian law.

The 2011 Joint Declaration states an absolute position against cutting off internet access for entire populations even on public order grounds.³⁶ This article accepts that population wide, indiscriminate shutdowns should fail because they cannot be narrowly tailored. Its acceptance of exceptional lawful restrictions concerns a different category: a short, defined interruption of a particular service and area that survives strict evidence based review. If a measure affects an entire population without service continuity or differentiation, it falls on the rejected side of that line.

7.2 Togo and territorial shutdowns

In *Amnesty International Togo v Togolese Republic*, the ECOWAS Court held that shutdowns imposed during protests violated freedom of expression. It treated internet access as a derivative vehicle for the exercise of expression, awarded compensation to applicants, and ordered Togo to adopt a legal framework consistent with freedom of expression.³⁷ The decision is not binding on Indian courts. It is useful because it separates three remedies: a declaration of violation, individual compensation, and prospective legal reform.

³³ International Covenant on Civil and Political Rights, arts. 2, 19; Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties*, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), paras. 3-8, 15.

³⁴ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, paras. 7, 14; *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey* (1984) 2 SCC 534, para. 5.

³⁵ Human Rights Council, *Resolution 32/13: The Promotion, Protection and Enjoyment of Human Rights on the Internet*, UN Doc. A/HRC/RES/32/13 (July 18, 2016), para. 10; Office of the United Nations High Commissioner for Human Rights, *Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights*, UN Doc. A/HRC/50/55 (May 13, 2022), paras. 7-14, 44-59.

³⁶ Joint Declaration on Freedom of Expression and the Internet, UN, OSCE, OAS, and ACHPR freedom of expression mandates, June 1, 2011, para. 6(b).

³⁷ *Amnesty International Togo v. Togolese Republic*, ECW/CCJ/JUD/09/20, ECOWAS Court of Justice, June 25, 2020, merits and orders.

7.3 Indonesia and throttling

Indonesia's Jakarta State Administrative Court in *Alliance of Independent Journalists v Minister of Communication and Information* held that government throttling and shutdown measures in Papua and West Papua in August and September 2019 were unlawful governmental acts.³⁸ The case addresses the category closest to *Foundation for Media Professionals*: degraded access can be unlawful even when a network is not completely disconnected. Its institutional setting differs from India, but it shows that technical gradation does not remove administrative law duties.

7.4 Turkey and platform or domain blocking

In *Ahmet Yildirim v Turkey*, an order aimed at one site led to blocking the Google Sites domain, preventing access to the applicant's lawful site. The European Court of Human Rights found that the legal framework did not provide sufficient safeguards against collateral blocking.³⁹ In *Cengiz and Others v Turkey*, blocking YouTube interfered with users' ability to receive and impart information.⁴⁰ Neither case involved a territorial network shutdown. They are relevant to fit and collateral effects, not direct templates for emergency telecom law.

The comparative lesson is therefore modest and specific. Togo demonstrates remedial consequences for a protest related territorial shutdown. Indonesia shows review of throttling as a governmental act. Turkey shows why orders directed to content or a platform must not automatically expand to lawful resources. Together they support particularisation, reasons, independent scrutiny, and remedies while preserving the distinctions among the measures.

8. Transparency Review and Remedies

8.1 Publication and open justice

Anuradha Bhasin required publication because a person must have access to an order before challenging it.⁴¹ The 2024 Rules now make publication express, but they do not prescribe a single repository, accessible format, language, or maximum delay. Each Union and State order should appear promptly on a searchable portal with the issuer, legal basis, service class, geography, start and end time, reasons, review status, continuation, and restoration notice.

This proposition should not be supported by *Indira Jaising v Supreme Court of India*, which concerned transparency and criteria in designating senior advocates.⁴² Broader open justice principles are better located in *Swapnil Tripathi v Supreme Court of India*, concerning public access to court proceedings, while publication of shutdown orders rests directly on *Anuradha Bhasin*.⁴³ The two propositions are distinct.

³⁸ *Alliance of Independent Journalists v. Minister of Communication and Information*, Decision No. 230/G/TF/2019/PTUN-JKT, Jakarta State Administrative Court, June 3, 2020, 246 and final order.

³⁹ *Ahmet Yildirim v. Turkey*, App. No. 3111/10, European Court of Human Rights, judgment of December 18, 2012, paras. 64-68.

⁴⁰ *Cengiz and Others v. Turkey*, App. Nos. 48226/10 and 14027/11, European Court of Human Rights, judgment of December 1, 2015, paras. 49-57, 62-65.

⁴¹ *Anuradha Bhasin*, paras. 96, 104.

⁴² *Indira Jaising v. Supreme Court of India* (2017) 9 SCC 766, paras. 65-74.

⁴³ *Swapnil Tripathi v. Supreme Court of India* (2018) 10 SCC 639, paras. 20-24, 50-53; *Anuradha Bhasin*, paras. 96, 104.

8.2 Staged review and the twenty four forty eight seventy two hour sequence

The proposed thresholds perform different functions and run cumulatively.

At **twenty four hours**, the existing statutory process should operate. An urgent substitute order must be confirmed by the competent authority, and every order must be sent to the administrative Review Committee. This is an internal legality and continuity check. It does not convert the first day into a rights free period.

By **forty eight hours**, an order still in force should reach an independent reviewer. Forty eight hours allows an immediate response and compilation of the record while preventing the five day administrative meeting period from becoming the first meaningful scrutiny. The independent reviewer should examine all six steps and may vary or terminate the order.

At **seventy two hours**, any continuing restriction should be notified automatically to the jurisdictional High Court with the order, review findings, public gist of confidential material, and restoration plan. Seventy two hours marks the point at which cumulative harm to health, livelihood, education, and public participation requires access to a court without waiting for an affected person to organise litigation while disconnected.

These are proposed safeguards, not empirical claims that constitutional harm begins at the twenty fourth, forty eighth, or seventy second hour. Their rationale is institutional sequencing: executive confirmation, independent merits review, then automatic judicial availability. The clocks do not restart on renewal. A replacement or materially extended order carries forward the elapsed period unless a genuinely new emergency is demonstrated.

8.3 Compensation and structural relief

Compensation and structural remedies answer different injuries. Public law compensation addresses a completed violation and the loss suffered by an individual. The Supreme Court in *Nilabati Behera v State of Orissa* distinguished a constitutional compensation remedy from ordinary private law damages and recognised monetary relief for established infringement of Article 21.⁴⁴ A claimant affected by an unlawful shutdown would still need to establish the legal basis, causation, and appropriate measure; compensation should not be promised automatically for every invalid procedural step.

Structural relief addresses a continuing institutional defect. *Vineet Narain v Union of India* illustrates continuing directions designed to correct systemic failure and protect institutional performance.⁴⁵ In the shutdown context, structural orders may require a publication portal, preserved decision records, periodic reporting, training, or revised review procedures. They do not substitute for compensation to a person who proves loss. Conversely, individual compensation does not repair a system that repeatedly issues unpublished or formulaic orders.

⁴⁴ *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746, paras. 16-22, 33-35.

⁴⁵ *Vineet Narain v. Union of India* (1998) 1 SCC 226, paras. 48-58.

Mootness also requires attention. A short order may expire before final hearing. Courts should retain jurisdiction where the issue is capable of repetition yet evades review, decide legality, preserve claims to compensation, and issue prospective directions when the evidential record supports them.

9. A Rights Preserving Suspension Protocol

The proposed protocol translates the six step test into administration.

First, the issuer should complete a standard decision record identifying the threshold event, statutory ground, evidence, affected service, geography, duration, expected causal mechanism, alternatives, essential services, vulnerable populations, and restoration trigger. An urgent oral or abbreviated operational direction should not be implemented without the written order required by the Rules.

Second, the order should use the least restrictive technically feasible design. The decision record must distinguish content blocking, platform blocking, throttling, mobile data suspension, fixed broadband suspension, voice interruption, and territorial scope. It should explain the rights effects of the selected alternative and any foreseeable displacement.

Third, essential services should have continuity plans rather than a vague promise of exemption. Hospitals, emergency numbers, court systems, disaster information, accessible government services, welfare delivery, and payment infrastructure require tested routes. Whitelisting may itself create security, equality, and net neutrality concerns, so the order should disclose selection criteria, performance limits, and a route for urgent additions.

Fourth, publication should occur at or immediately after implementation, subject only to narrow redaction. The portal should preserve superseded orders and Review Committee outcomes. The absence of timely publication should create a rebuttable presumption against validity because it obstructs challenge.

Fifth, the twenty four forty eight seventy two hour review sequence should apply. Administrative review remains valuable for speed and responsibility within government. Independent review adds institutional distance. Judicial notification supplies enforceable scrutiny and a public reasoned decision for restrictions that continue beyond the emergency window.

Sixth, renewal should require fresh evidence and report what the prior order achieved. Repetition of the same formula is not a new necessity assessment. The fifteen day maximum remains an outer legal ceiling and should never be used as the default duration.

Seventh, the State should publish an annual dataset recording the number of orders, issuing authority, grounds, service and geographic scope, duration, Review Committee result, independent and judicial outcome, renewal, and restoration. Outcome fields should state the evidence used to evaluate whether the order met its aim. The Parliamentary Standing Committee's call for impact assessment and uniform guidance supports this institutional learning function.⁴⁶

Eighth, service providers should preserve the written order, implementation time, service and area affected, technical method, restoration time, and any mismatch between the order and implementation. The

⁴⁶ Parliamentary Standing Committee on Communications and Information Technology, *Suspension of Telecom Services/Internet and Its Impact*, Twenty-Seventh Report, Seventeenth Lok Sabha (December 1, 2021), recommendations 1-15.

UN Guiding Principles on Business and Human Rights do not override a lawful domestic command, but they support human rights due diligence, transparency where lawful, and remediation for impacts linked to business operations.⁴⁷

Ninth, affected persons should have an accessible urgent challenge route. Courts should require the complete non-privileged record, test the claim to confidentiality, provide a gist, and allocate factual uncertainty to the State where its own non-disclosure prevents verification.

Tenth, remedies should be matched to the wrong: restoration or variation for a continuing order, declaration for expired unlawful action, compensation for proved constitutional harm, costs for unjustified resistance, and structural relief for repeated institutional failure.

10. Objections and Limits

10.1 Urgency and institutional competence

Security officials may possess information that courts and independent reviewers lack, and they may need to act quickly. The protocol accommodates a first response by the authorised executive. It does not require prior judicial approval in every case. It does require the executive to record why it acted and to submit that record to progressively more independent scrutiny as the restriction continues.

Deference may concern the evaluation of operational risk, but it should not eliminate examination of legal threshold, geography, service class, duration, alternatives, or evidence. *Foundation for Media Professionals* shows the danger of process without a merits conclusion: referral to another executive committee can postpone rather than resolve the rights question. A court may avoid substituting its preferred security policy while still requiring the State to prove the facts and inference on which its chosen restriction depends.

10.2 Technical feasibility

Network architecture may make perfect targeting impossible. That fact must be demonstrated, not presumed. Some alternatives, including whitelisting or platform blocking, can create new vulnerabilities and discrimination. The six step test therefore asks for feasible alternatives and comparative rights costs. Where no narrower technical measure can achieve the urgent objective, the State may satisfy necessity, but balancing still requires service continuity and short duration where possible.

10.3 Security and the rejection of population wide shutdowns

The State has positive duties to protect life and may face terrorism, communal violence, or coordinated incitement. This article does not treat the duty as illusory. It rejects the inference that a serious purpose automatically validates an indiscriminate means. The position is consistent with the international rejection of cut offs affecting whole populations because an entire population restriction ordinarily lacks narrow tailoring. The exceptional lawful case contemplated here is defined by limited service, place, time, evidence, and safeguards. If those features are absent, the exception does not apply.

⁴⁷ United Nations, *Guiding Principles on Business and Human Rights*, UN Doc. HR/PUB/11/04 (2011), principles 11, 13, 17, 22.

10.4 Limits of the protocol

No checklist can eliminate political misuse, secret evidence, or judicial passivity. De Gregorio and Strem-lau are right that legalisation may normalise a measure and that enforcement institutions matter.⁴⁸ The protocol reduces those risks by forcing an auditable record and attaching deadlines and remedies. Its success would depend on publication, reviewer independence, judicial willingness to test evidence, and technical investment in continuity. Further empirical work should examine orders and outcomes after 2024, including whether Review Committees set aside orders, whether geographic requirements reduce scope, and whether specific alternatives perform better.

Conclusion

The 2024 Rules improve Indian shutdown law but do not complete its constitutional transformation. They make publication, geographic definition, fixed duration, a twenty four hour transmission period, and consideration of reasonable alternatives express. They preserve a largely executive review body, permit each order to last as long as fifteen days, and do not specify the evidential intensity of proportionality.

The distinction between a right and an absolute right resolves the conceptual dispute. *Pragya Prasun* recognises digital access as intrinsic to Article 21 in conditions where essential services and participation are digitally mediated. *Anuradha Bhasin* protects speech and trade through the internet and permits justified restrictions. Read together, the cases require protection and a limitation analysis; neither supports unreviewable access nor unreviewable suspension.

The article's six step test makes original contribution at the point where Indian doctrine has been weakest. It links each stage of proportionality to a record and a burden held by the State. Applied to the Jammu and Kashmir 2G order, the test accepts the importance of the security purpose but identifies unresolved questions about territory wide causal fit, alternatives, technical scope, pandemic related rights costs, and independent review. This is the difference between reciting proportionality and deciding with it.

A lawful exceptional restriction remains possible, but only after the State proves why the particular network, area, population, and period must bear the restriction and how essential lawful activity will continue. Twenty four hour administrative control, forty eight hour independent review, and seventy two hour judicial notification give that duty an institutional sequence. Publication and matched compensatory and structural remedies make the sequence enforceable. Without those features, a temporary emergency power can become an ordinary method of governance.

⁴⁸ De Gregorio and Strem-lau, "Internet Shutdowns," 4235-38.

Değerlendirme / Review

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Beyanlar / Declarations

AI tools was used during the research and preparation of this article to assist with literature searches, source identification and verification, analysis and organization of relevant information, as well as language editing and proofreading. The author independently evaluated and verified the information obtained through the tool and remains fully responsible for the accuracy, originality, interpretation, and final content of the article.

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