EDITORIAL NOTE

The Editorial Board is pleased to announce the publication of the first volume of the third issue of the HNLU Student Bar Journal. We have, once again, come out with an online publication in order to promote open access. This issue contains six articles.

The first article, **'The Legal Quagmire Surrounding Money Bills- K.S. Puttaswamy v. Union of India'**, is one in which the author attempts to explain the controversy of the 'Aadhar Bill' being referred to as a 'money bill' in the case of K.S. Puttaswamy v. Union of India. She believes in the strict interpretation of Article 110 of the Constitution to maintain the sanctity of its 'federal' nature. In the second article, **'When the Judiciary forfeits the trust of the Citizenry'**, the dilution of the 'doctrine of separation of powers' is the focal point. The loss of the citizen's trust in the judiciary is a result of a series of decisions including the decision to appoint Former Chief Justice Ranjan Gogoi to the Rajya Sabha. The third article, **'Dissenting Judgments- Significance and Importance on the Touchstone of Democracy'**, emphasises on the belief that dissent and democracy are two sides of the same coin. The author argues in favour of encouraging dissenting opinions of judges to maintain a strong democracy and ensuring a better quality of judgments. The fourth article, **'The Dilemma of Conscience- A Closer look at the Sabrimala Verdict'**, the author supports the Sabarimala judgment with an ounce of doubt. In his opinion, the evolution of feministic jurisprudence is laudable but the element of practicality is lost when the judiciary chooses to interfere with the religion and conscience of the people. The fifth article, **'Access Denied: The Supreme Court and Kashmir's Internet Crisis'**, discusses the inefficient policy decision leading to the longest internet shutdown imposed in Jammu and Kashmir. The authors discuss the proportionality tangent of the issue and opine that the decision of the government needs to be tested on the ground of reasonability.

We hope that this edition of the HNLU Student Bar Journal contributes to the growing output of law school reviews in India and takes forward the tradition of student editing and reviewing. We would like to thank all the authors and other contributors who were kind enough to work with us in the publication of this issue and hope that it is an informative read.

- HNLU Student Editorial Board (SEB)

THE LEGAL QUAGMIRE SURROUNDING MONEY BILLS: AN ANALYSIS OF K.S. PUTTASWAMY V. UNION OF INDIA

By Muskaan Wadhwa[1]

INTRODUCTION

The extant constitutional scheme concerning money bills has seen a trend of misuse by the executive. In case of a money bill, the Constitution carves out an exception to the general principle of bicameralism where a bill is scrutinised by both houses of the parliament. A money bill, contrary to an ordinary or financial bill, can be enacted into law without the due consensus of the Rajya Sabha. This is because the Constitution provides that the money bill can only be introduced in the House of the People (Lok Sabha). The Rajya Sabha only has the power to make recommendations that may or may not be accepted by the Lok Sabha. Furthermore, if the Rajya Sabha does not return the money bill within 14 days, it is deemed to have been passed at the expiry of that period. The Rajya Sabha's powers are therefore only recommendatory and the true power lies with the Lok Sabha.[2]A bill can be certified as a money bill *only* if provisions of the bill fall exclusively within the categories laid out under Article 110. The Constitution vests with the Speaker of the Lok Sabha the power to certify a bill as a money bill and such decision of the Speaker shall be final.

The unique nature of money bill has the effect of denuding the power of the Rajya Sabha as well as depriving the power of the President to return a bill for reconsideration. The peculiar character of money bills, therefore, calls for a strict and narrow construction of the word 'only' in Article 110. Such a strict interpretation becomes even more crucial in the current political scenario where the central government does not have a majority in the Rajya Sabha giving them an incentive to pass as many bills as money bills to avoid the scrutiny of the Upper House.

This article does not focus upon the justiciability of the decision of the Speaker in designating a bill as a money bill as it has rightly been settled by the apex court in *K.S. Puttaswamy*

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[2] M.P. Jain, Indian Constitutional Law 71 (Lexis Nexis, 2014).

v. Union of India[3] by overruling *Mohd. Saeed Siddiqui*[4] and *Yogendra Kumar Jaiswal*.[5] This article instead advocates for a narrow interpretation of the word 'only' in line with the basic structure of the Constitution.

ANALYSIS OF K.S. PUTTASWAMY V. UNION OF INDIA

Background

The rampant use of money bills as a tool to achieve ulterior political motives by those in power came to the forefront with the enactment of the Aadhaar Act, 2016.[6] The validity of the Act came to be challenged before the Supreme Court in the *Puttaswamy* judgement. While much of the judgement dealt with the issue of privacy as a fundamental right, one of the significant issues within the judgement, which in my opinion, was erroneously decided was the designation of the Aadhaar Bill as a money bill.

Arguments put forth by the Petitioners

The designation of the Aadhaar Bill as a money bill was challenged on the ground that while Section 7 of the impugned bill provided for subsidies, benefits and services from the Consolidated Fund of India, some other provisions of the bill, namely, Sections 23(2)(h), 54(2)(m) and 57 did not fall under any of the clauses under Article 110 of the Constitution. The petitioners were in favour of strict construction of the word 'only'. They relied on the precedent *Saru Smelting Ltd. v. Commissioner of Sales Tax* where the word 'only' was interpreted by the Apex Court.[7] A notification under the U.P. Sales Tax Act provided that 'only copper, tin, nickel, zinc or any other alloy containing any of these metals' were entitled to a reduced rate of sales tax. The questions before the court were whether Phosphorous Bronze could be exempted from sales tax. The Court considered the expression 'only' to be of prime importance in the instant case. Phosphorous Bronze contained Phosphorous, even though in small quantity, and therefore could not be said to fall under the said entry.

[3] K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1.
[4] Mohd. Saeed Siddiqui v State of Uttar Pradesh, AIR 2014 SC 2501.
[5] Yogendra Kumar Jaiswal v State of Bihar, AIR 2016 SC 1474.
[6] Pratik Datta, Shefali Malhotra & Shivani Tyagi, *Judicial Review and Money Bills*, 10 NUJS L. REV. 1-36 (2017).
[7] Saru Smelting Ltd. v. Commissioner of Sales Tax,1993 Supp (3) SCC 97.

It was also contended by the Petitioners that the Rajya Sabha was an essential part of the constitutional federalism and a part of the basic feature of the Constitution. By-passing the Rajya Sabha by the enactment of bills under the guise of money bills was therefore unconstitutional.

Arguments put forth by the Respondent

The government, on the other hand, contended that Section 7 of the Aadhaar Act was the "heart and soul" of the Act. This section dealt with subsidies, benefits and services, the expenditure for which was to be incurred from the Consolidated Fund of India satisfying the criteria laid down in Article 110 and argued that all other Sections were merely incidental to Section 7. The government based their argument on the doctrine of "pith and substance" and stated that the bill, in its pith and substance, should pass the test of being a money bill.

The Court accepted the Government's argument and held that the Act had been rightfully designated as a money bill. Justice Chandrachud, however, dissented with the majority opinion stating that the Act traversed beyond the narrow confines of a money bill. He highlighted the importance of bicameralism as a check on majoritarianism and the need for adequate representation of federal States.

Issues with the Judgement

The author argues that the majority judgement in the context of the money bill is erroneous on several grounds. *Firstly*, the doctrine of pith and substance is applied to adjudicate legislative competence and has no role to play in examining whether or not the requirements of Article 110 are satisfied.[8] *Secondly*, according to the judgement of the majority, Section 7 of the Act conforms with Article 110(e) as the expenditure is made from the Consolidated Fund of India and all other challenged provisions are merely incidental to Section 7 is fallacious. Such a holding fails to take into account the use of the word 'only' in Article 110. The expression 'only' implies the provisions of the bill should deal with only those matters which are enumerated in the Article. A broad interpretation of Article 110 will have negative ramifications as any governmental activity would satisfy Article 110(e) given that most governmental functions are funded by the Consolidated Fund

[8] Suhrith Parthasarathy, *The Aadhaar Judgement and the Constitution – III: On Money Bill*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Oct. 1, 2018); https://indconlawphil.wordpress.com/2018/10/01/the-aadhaar-judgment-and-the-constitution-iii-on-the-money-bill-guest-post/.

of India. Therefore, now, if a bill contains an element of one of the clauses enumerated in Article 110, it could be designated as a money bill. This would effectively give a free hand to the majority in the Lok Sabha to enact laws without any scrutiny or say of the Rajya Sabha undermining the very fabric of our Constitution.

The Constitution, apart from the money bills, provide for the financial bills, which can also only be introduced in the Lok Sabha. A financial bill, unlike a money bill, deals with both, matters enumerated in Article 110 and other extraneous matters. The intent behind financial bills was to secure the position of the Rajya Sabha, who can affect amendments to a financial bill and any dead-lock between the two houses can be resolved by a joint session. The drafting intent behind this was to prevent the Lok Sabha from passing the ordinary bills with some financial clauses as a money bill, denuding the power of the Rajya Sabha. By the very existence of the financial bill, it becomes clear, that a bill not exclusively dealing with the clauses in Article 110 cannot be designated as a money bill. The rationale of the Court in *Puttaswamy*, therefore, goes against the very drafting intent of Article 110, and such an interpretation would be a fraud on the Constitution.

CONCLUSION

The object of this article has been to highlight the importance of strict interpretation of Article 110 in consonance with federalism. Rajya Sabha occupies an important position in a federal polity like ours. By-passing the Rajya Sabha would be against the idea of deliberative dialogue, transparency and public interest. The apex court recently took cognizance of the ambiguity surrounding money bills in *Rojer Matthew v. South Indian Bank Ltd*.[9] The Court recognized that a liberal interpretation of Article 110 in *Puttaswamy* could not align with the bicameral parliamentary system envisaged by the Constitution. A seven-judge bench has therefore now been constituted to decide the correctness of passing of the Aadhaar Act as a money bill. As noted by Justice Chandrachud in his dissent, "delicate balance of bicameralism lies at the very heart of India's parliamentary democracy." It, therefore, becomes essential for a strict interpretation of the word 'only' in Article 110 of the Constitution and conferring greater scrutinising power to the Rajya Sabha.

[9]Rojer Matthew v. South Indian Bank Ltd, 2019 (15) SCALE 615.

WHEN JUDICIARY FORFEITS THE TRUST OF THE CITIZENRY

By Jisha Garg[1] and Anchal Bhateja[2]

Human beings are particularly social creatures. They desperately require socialisation and cannot prevent the inevitable frictions that stem out of it. The birth of these frictions gives rise to the need of individuals and institutions that can resolve these frictions. Due to the nature and role of these institutions, we tend to attach with them virtues of impartiality, fortitude, moral courage and features like stability, fairness, independence.

In India, the quantum of trust reposed in the judiciary and judges is exponentially higher than that which is reposed in any other institution. The immense credence that the judiciary has to its name, is manifestly visible in the Constitution of the country. A few examples of this would be Article 142[3] that vests the Supreme Court with the power "to pass such decree or make such order as is necessary for doing complete justice", Article 13 (2)[4] read with Article 32[5] and 226[6] of the Indian Constitution that empowers the Supreme Court and High Courts to invalidate all the laws that are in contravention with the Fundamental Rights, the thirteen bench judgement rendered in *Keshavananda Bharati v. State of Kerala*[7] that empowered the judiciary to review laws passed by the legislature and also made this power of review immune from any alterations by the legislature. All these factors establish that the judges and the judiciary are entrusted with vital constitutional and public functions, due to which the degree of moral rectitude associated with them is extremely high.

However, the assumptions ingrained in the minds of the citizens, due to which they feel that the judges are replete with virtues and are immune from biases or political pressures, are fact-free. Such assumptions have been brutally debunked in various instances when judges of the Collegium have made appointments based on nepotism, when the collegium has made unfair transfers under political pressures, when judges have penned down politically motivated

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[2] IInd year student, National Law School of India University, Bengaluru.
[3] Art.142, Constitution of India.
[4] Art.13(2), Constitution of India.
[5] Art.32, Constitution of India.
[6] Art.226, Constitution of India.
[7] Keshavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

judgements and most notably when these individuals on the bench have accepted post-retirement appointments by the executive. The nomination of former Chief Justice of India, Justice Ranjan Gogoi has been the latest addition to the list of these judges.[8]

As has been argued[9] by many jurists and commentators, this appointment has threatened the very sanctity and efficacy of the doctrine of separation of powers which finds reference in Article 50[10] of the Constitution. The doctrine is indispensable for curbing the abuse of executive power, preserving the freedom of the judiciary and ensuring the efficient functioning of the three organs of the State.[11] The fear of inefficiency resulting from the blurring demarcations between the executive and the judiciary is only one side of the story.

Given that right to life and liberty entails dignified existence and not mere animal existence[12], it becomes important to note the views of the citizens about the judiciary and whether in the current scenario the appointment of Justice Gogoi would blemish or embellish this viewpoint. How such actions on the part of judges negatively affect individual rights of life and liberty also needs to be considered.

With regard to the viewpoint held by the citizenry, as has been argued initially, a high degree of moral rectitude is expected of our judges. According to Justice Chandrachud, judges and their judgements are trusted for being impartial irrespective of their background because people generally view the judiciary as a bastion of justice and this perception leads to a transference of trust to all the members of the judiciary.[13] However, immediate appointments of judges after they retire casts a shadow of doubt on the justness of the judgements rendered by them. Irrespective of their merits, people presume these pre-retirement decisions to be politically coloured or aimed at securing favours from the executive. This happens because as per the judicially accepted test of

[8] Govt. of India, Ministry of Home Affairs, F. No. 15/2/2018-M & G (March 16, 2020).
[9] *Kurian Joseph hits out at Ranjan Gogoi for taking Rajya Sabha route*, THE ECONOMIC TIMES, (March 18, 2020); https://economictimes.indiatimes.com/news/politics-and-nation/kurian-joseph-hits-out-at-ranjan-gogoi-for-taking-rajya-sabha-route/articleshow/74684534.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.
[10] Art.50, Constitution of India.
[11] Samanwaya Rautray, *Kurian Joseph hits out at Ranjan Gogoi for taking Rajya Sabha route*, THE ECONOMIC TIMES (March 18, 2020).
[12] Maneka Gandhi v. Union of India, AIR 1978 SCC 597.
[13] Rangin Pallav Tripathi, *Don't judges need the trust of the people more than people need to trust judges*, THE WIRE (October 7, 2019); https://thewire.in/law/dont-judges-need-the-trust-of-people-more-than-people-need-to-trust-judges.

bias which was laid down in the case of *Rattanlal Sharma v. Managing Committee and others*[14], the presumption of bias is stronger in case of the judiciary. The existence of actual bias is not necessary and the mere presumption of bias, which is founded on grounds that are not very improbable or unreasonable, is enough to presume a bias.

Apart from the attack on the sanctity of judiciary and the resulting loss of public trust, the people who view the judiciary as a reliable adjudicator and custodian of their rights may now opt for extra-judicial means, which might not abide by the established Constitutional principles or ideals. Vesting adjudicatory powers with Khap panchayats that are known for not following principles of equality or secularism[15] and not following the due process prescribed in the Constitution, is one instance of such public behaviour which stems from lack of trust in the judiciary. Increased instances of people taking matters into in their own hands, mobocracy, the public lynching of alleged kidnappers[16] or beef eaters[17] is another such instance. Thus, it can be concluded that such a situation where citizenry loses faith in the judiciary is extremely undesirable and can lead us to a state of utter lawlessness and instability.

Article 32 and 226 of the Constitution empower the Supreme Court and the High Courts to defend the fundamental rights of the individuals. Likewise, as per the ruling in *Sidheshwar Sahakari Sakharkarkhana Ltd. V. Union of India*,[18] the judiciary is vested with the power to review the administrative decisions of the government. All this indicates that the judiciary plays a significant role in adjudicating disputes between the State and the individual. This accounts for nearly 46% of the total litigation.[19] Thus, the only remedy available to an individual when they are wronged by an executive or an administrative action is the judiciary. But when the judiciary sheds its virtue of impartiality, the probability of reaching a pro-executive outcome increases and the

[14] Rattanlal Sharma v. Managing Committee and others, AIR 1993 SCC 2155.
[15] *Illegal for khaps to stall marriages between adults: Supreme Court*, THE ECONOMIC TIMES, (March 18, 2018); https://economictimes.indiatimes.com/news/politics-and-nation/khap-interference-in-marriages-absolutely-illegal-sc/articleshow/63477332.cms?from=mdr.
[16] *India's Supreme Court warns of 'mobocracy,' urges government to pass anti-lynching law after deadly attacks*, THE WASHINGTON POST, (July 17, 2018); https://www.washingtonpost.com/world/asia_pacific/mobocracy-cannot-be-permitted-indias-supreme-court-cracks-down-on-social-media-fueled-lynchings/2018/07/17/f50d89a3-b198-4830-9f7f-4823f8127f0a_story.html.
[17] *Will Modi stop India's cow terrorists from killing Muslims?,* THE WASHINGTON POST, (July 25, 2018); https://www.washingtonpost.com/news/global-opinions/wp/2018/07/24/will-modi-stop-indias-cow-terrorists-from-killing-muslims/.
[18] Sidheshwar Sahakari Sakharkarkhana Ltd. V. Union of India, AIR 1999 SCC 5866.
[19] Department of Justice, *Active plan to reduce Government Litigation, 2017*, 2.

rights of individuals are detrimentally affected. The issue then becomes, which court can an individual approach apart from these pro-executive courts? This "pro-executivenss" of the judiciary and its impact on individual rights becomes quite apparent when Justice Gogoi, the then CJI under the PIL powers, took over the process of National Register of Citizens and thereafter, decided the deadlines, procedures and documents necessary for the NRC[20]. The question of the constitutionality of NRC is a separate issue, however, the very fact that the former CJI played an emphatic role in a purely administrative and executive action that had the potential to affect the substantive rights of individuals, speaks volumes about his pro-executive stance. Another such instance of probable collusion between the judiciary and the executive was seen when Justice Gogoi rejected Habeas Corpus petitions filed by politicians and students before the Supreme Court after the Kashmir lockdown. The unfortunate fact is that he is not the only one to accept such a political appointment, other eminent justices like P. Sathasivam J., Ranganath Mishra J., AK Goel J. and so on have also been guilty of the same in the past. This shows that the problem of post-retirement appointments is not an isolated one but is rather systematic.

Due to this, the executive's decision to make such appointments and the judge's decision to accept such positions should be revisited. The drafting Chairman of the Constituent Assembly, Dr.BR Ambedkar was sure that the judiciary will not have to adjudicate many disputes between the states and the citizens as he thought that the primary function of the judiciary would be to resolve disputes between private parties only[21]. This is why he rejected PK Sen's proposal to include a constitutional provision imposing an embargo on sitting and retired judges from holding offices under the Government of India or a State. Ambedkar's assumption has become archaic in current times when the State is a litigant in 46% of cases and the judiciary hears and adjudicates conflicts between the State and citizens for most of the time. The need to have a provision identical to the one proposed by Sen has arisen now more than ever before. Even if this idea seems too radical, there at least needs to be a cooling period of a few years, before a retired judge is offered some position by the executive.

[20] Gautam Bhatia, *The troubling legacy of Chief Justice Ranjan Gogoi*, THE WIRE (March 16, 2019); https://thewire.in/law/chief-justice-ranjan-gogoi-legacy.
[21] Arghya Sengupta, *After the judges retire: time for a fresh look at sensitive judicial afternoons and evenings*, (May 8, 2019); https://timesofindia.indiatimes.com/blogs/toi-edit-page/after-the-judges-retire-time-for-a-fresh-look-at-sensitive-judicial-afternoons-and-evenings/.

All these measures are necessary for the trust and faith in the judiciary to revive, survive and thrive. They are also important to materialise 'Restatement of Values of Judicial Life'[22] which was adopted by the Supreme Court on the 7th May 1997. This restatement encourages the members of the higher judiciary to conduct themselves in a way, such that people's faith in the impartiality of the judiciary is affirmed. This cannot happen unless the issue of post-retirement appointments is addressed jointly by the judiciary and the executive.

[22] Revathi Krishnan, *Supreme Court crisis: These are the 16 values of judicial life our judges swore to uphold*, THE PRINT (May 2, 2019); https://theprint.in/judiciary/supreme-court-crisis-these-are-the-16-values-of-judicial-life-our-judges-swore-to-uphold/229845/.

DISSENTING JUDGEMENTS: THE TOUCHSTONE OF DEMOCRACY

By Preethi V.P.[1]

"If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind." - John Stuart Mill

The Constitution of India guarantees to every citizen, the Right to Freedom of Speech and Expression[2] and this freedom includes the liberty to freely express one's views, opinions, and thoughts, through speech or text. This right also includes the right to think and organise one's thoughts; to not be influenced by any external views and hold a view that is completely one's own. This calls for the need to discuss the relevance of the right to freedom of speech and expression and dissenting judgements on the touchstone of democracy as anticipated in the Preamble to the Indian Constitution.

Dissenting judgements are decisions rendered by one or more judges of a particular court, who disagree with the majority opinion and therefore express their views in relation to the case, differing from the majority opinion of the bench. This may or may not be adopted, owing to the facts and circumstances of each case. Further, with the publication of such dissent, the writer can clarify his or her stance with regard to the case and the need to adopt a different view. Needless to say, a dissenting judgement paves way for different approaches and solutions to a particular dispute, initiating discussion in society. Nevertheless, it is, at this juncture, very important to profoundly delve into the relevance and rationale of dissenting judgements.

The roots of dissenting opinions may be predominantly found in common law countries. Common law countries thus began to publish dissenting opinions for improved judicial administration.[3] The origin of dissenting opinions in India can be broadly split into four categories- Judicial dissent in the Supreme Court at Calcutta and other Presidency Courts, Judicial dissent in the Federal Court of India, Judicial dissent in the Privy Council and lastly,

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[2] Art. 19(1)(a), Constitution of India.
[3] Morgan G Donald, *The Origin of the Supreme Court Dissent*, 10 , 3, The William and Mary Quarterly, 353-377, https://www.jstor.org/stable/1917480.

Judicial dissent in the Supreme Court of India (post-independence). In this article judicial dissent in the Supreme Court shall be discussed with special emphasis on its influence on the functioning of the Indian Democracy.[4] With the enactment of the Constitution on 26th January 1950, the Federal Court gave way for the Supreme Court of India. As was practised in the Federal Court, the trend of writing and publishing seriatim opinions became the ritual in the apex court as well.

The first instance of dissent in India was witnessed in the case of *A. K. Gopalan vs. State of Madras,*[5] Justice Fazl Ali delivered his opinion which very astonishingly came to be recognised as a law only about 27 years later in the case of *Maneka Gandhi vs. Union of India*.[6] Furthermore, the dissenting opinion of Justice Khanna in the case of *ADM Jabalpur v. S.K. Shukla (*landmark judgment for *habeas corpus* cases*)*,[7] is also a significant example. The list of dissenting opinions does not end here, as per the author, these opinions have, in some exceptional cases, helped in altering the law and doing away with redundant provisions. Most recently, the dissenting opinion of Justice Dhananjay Chandrachud in *Justice KS Puttaswamy Vs. Union of India case*[8] is highly laudable in the context of declaring the right to privacy as a fundamental right and declaring the Aadhar Act to be ultra vires of the Constitution. The dissent by Justice Indu Malhotra in the case of *Indian Young Lawyers Association v. State of Kerala*[9]sparked discussion relating to the extent to which the courts can interfere in the matters of religion. Justice Malhotra opined that issues with a deep religious connotation shouldn't be tinkered with to maintain a secular atmosphere in the country[10] and said that the notions of rationality cannot be brought into the matters of religion.

Dissenting judgements, as seen in the above-mentioned examples, advocate for free speech and judicial autonomy. The author is curious about the rate of decline in the dissenting judgements in the past half-decade. As some crucial statistics show, between 1993 and 2016, out of 216 judgments delivered by Constitution benches only 36 judgments were marked to have

[4] *Ibid.*
[5] A K Gopalan vs. State of Madras, AIR 1950 SC 27.
[6] Maneka Gandhi vs. Union of India, AIR 1978 SC 597.
[7] ADM Jabalpur vs. S K Shukla, (1976) 2 SCC 521.
[8] Justice KS Puttaswamy vs. Union of India, (2017) 10 SCC 1.
[9] Indian Young Lawyers Association vs. State of Kerala, WP (C) 373/2006.
[10] *Sabarimala Verdict: What dissenting judge Indu Malhotra said*, INDIA TODAY, (Sep 28, 2018); https://www.indiatoday.in/india/story/sabarimala-indu-malhotra-dissenting-judgment-supreme-court-1351722-2018-09-28.

dissenting opinions. During the period 2017-2018, Constitution benches of the Supreme Court of India have rendered 18 judgments. Out of these, only two judgments (the Aadhar case and the Sabarimala Case)[11]contain notable dissents. This sort of a change in the trend of dissenting judgements calls for a reality check of the democratic practice in the Indian judiciary.

Article 145(5) of the Indian Constitution provides that the majority opinion of the judges is to be taken into consideration, however, the judges are free to write their own dissenting opinions, if they feel that the majority opinion is inconsistent or requires an alternative approach to that of the majority. This gives "mental independence" to the judges to think and opine in a manner that they think is rational.[12] The importance of recognising dissenting opinions is per se linked to judicial autonomy and the exercise of democracy in its truest essence. The necessity of dissenting judgements stems from the fact that this power helps the judges to decide in a non-partisan manner such that it inculcates a sense of progressive thinking. The evolution of law and society is possible only with the recognition of such dissent. It isn't entirely wrong to think that dissent and democracy are two sides of the same coin. So long as dissent takes a backstage in a democracy, such a kind of democracy remains only a democracy in theory. A democratic rule fails (in practice) when the dissenters aren't given a voice leading to acceptance of the totalitarian opinion, and eventually giving rise to mobocracy. Dissenting opinions aid in the evolution of law by doing away with those provisions that are redundant and amending those that require to see the light of change. By suppressing dissenters, not only is the dissenter victimised[13] but it also proves highly detrimental to the practice of democracy. Dissent in a democracy must not be suppressed.[14] The need to politicise it must be discouraged.

To conclude, it is important to note that dissenting opinions form the backbone of any democracy and suppressing a dissenter would only mean to wreak havoc in the society. The

[11] *Sharma Pratap Chinmoy, The Voice of Dissent: Contribution of Dissenting Opinions in Constitutional Law Cases;* https://www.barandbench.com/columns/contribution-of-dissenting-opinions-in-constitutional-law-cases.
[12] Rajagopal Krishnadas, *Supreme Court judgments recognise dissent as a 'symbol of a vibrant democracy' THE* HINDU, (Dec 30, 2019); https://www.thehindu.com/news/national/supreme-court-judgments-recognise-dissent-as-a-symbol-of-a-vibrant-democracy/article30434644.ece.
[13] Bhatia Gautam, *Dissenting judgments ensure that the Constitution is a living, breathing document,* HINDUSTAN TIMES, (Nov 20, 2017); https://www.hindustantimes.com/opinion/dissenting-judgments-ensure-that-the-constitution-is-a-living-breathing-document/story-3STSlzaom7vqTviQthsarK.html.
[14] Dissenting opinions enrich public discourse, THE TELEGRAPH (Aug 23, 2020); https://www.telegraphindia.com/opinion/dissenting-judges/cid/1670609.

sanctity and independence provided to each judgement must and should be respected, after all, every judge in the Supreme Court is a human being and among such an intellectual conglomeration of learned stalwarts, disagreement and debate, is bound to arise. Therefore, such conflicts of interests and debates must be highly encouraged and each individual's personal opinions must be respected. Lastly, to quote Albert Einstein, "Blind belief in authority is the greatest enemy of truth", similarly blind acceptance of majority shall not always yield the truth and the floor must be open for debate and deliberation to arrive at the penultimate truth.

THE DILEMMA OF CONSCIENCE: A CLOSER LOOK AT THE SABARIMALA VERDICT

By Abhijith S Kumar[1]

"*Should judges ignore the disaffection caused by their decisions? The spirit of the law demands a considered appreciation of the social milieu. The invocation of battle [review petition] metaphors to sanctify a review-worthy judgment is nothing but an apology for judicial absolutism*",[2] opined a civilian in response to the review application against the Sabarimala verdict.[3] However, a large section also maintains that "*the decision reaffirms the Constitution's transformative character and derives strength from the centrality it accords to the fundamental rights.*"[4] Both observations raise cardinal issues on the judicial process and constitutional aspirations which are addressed hereafter. Even when the author desires to side with the revolutionary evolution of feministic jurisprudence in this judgment which upholds constitutional morality as against various patriarchal notions, the glitches in the majority opinion cannot be overlooked.

The judgment rendered by Dipak Mishra, J. states: "*The irony that is nurtured by the society is to impose a rule, however unjustified, and proffers explanation or justification to substantiate the substratum of the said rule*". The learned judge goes on to acknowledge the long history of oppression women have had to suffer and traces the dualism in religion which is driven by gender stereotypes. The rape culture prevalent in India and the gender-specific violence/discrimination stems from the factum of gender role attribution. Being a social institution, the courts in India have a socio-moral obligation to interfere in such matters. However, one of the very basic issues that popped up in the judgment was the constitutional authority of courts to comment on religious matters.

Faith and religion are so intertwined with the culture and social fabric of the nation that often more rights are attributed to deities as opposed to the hapless subjects who are 'living'. The discussion of celibacy and austerity exposes the vulnerability of our society, which sadly doesn't

[1] IVth year student, National University of Advanced Legal Studies (NUALS), Kochi.
[2] *Sabarimala verdict*, THE HINDU (November 29, 2019); https://www.thehindu.com/opinion/letters/sabarimala-verdict/article30110765.ece.
[3] Indian Young Lawyers' Association & Ors. v. State of Kerala &Ors., 2018 SCC OnLine SC 1690.
[4] *Freedom to pray: on Sabarimala verdict*, THE HINDU (September 29, 2018); https://www.thehindu.com/opinion/editorial/freedom-to-pray/article25074443.ece.

seem to do anything other than suppress dissenting voices. Unfortunately, those arguments were raised to extend constitutional rights to the deity beyond property rights, the extension of which was the reason for conferring a juristic personality.

Placing reliance on the concept of secularism, Indu Malhotra, J. vehemently attacks the interference of courts in religious matters. Whereas, D.Y. Chandrachud, J. condemns the Bombay High Court decision in *Narasu*[5] and holds that immunizing customs and usages takes away the primacy of the Constitution. Religion, being yet another social institution, left unregulated and put beyond the purview of the judiciary may open Pandora's box. For this reason, the majority opinion holds good.

Along with the above-mentioned issue the court discussed the issues pertaining to the right to worship, dimensions of public morality, conceptual clarity of 'essential religious practice' doctrine and the issue of untouchability. The right to worship stems from Article 25 of the Constitution. The majority opinion places emphatic reliance on the usage 'all persons' within the Article to put across that the right is available to everyone irrespective of their gender. This is not denied in the dissenting judgment. However, according to the author, the reasoning given by each judge suffers from a lack of clarity. In the author's view, these opinions are conflicting interpretations of the same premise.

Dipak Mishra, J. explaining the tenets of religious freedom, draw observations from *Nar Hari Shastri*[6]:

> *"Once it is admitted that the temple is a public place of worship, the right of entrance into the temple for…. worship is a right which flows from the nature of the institution itself, and for the acquisition of such rights, no custom or immemorial usage need to be asserted or proved."*

The excerpt is a positive statement that negates the need for any evidence of customary practice to acquire the Right of Entry. But it is noteworthy that the same does not negate the evidentiary value of a custom to restrict entry. The challenge is posed in the further paragraph:

[5] NarasuAppa Pattil v. State of Maharashtra, 2004 SCC OnLine Bom 1142.
[6] Nar Hari Shastri v. Shri Badrinath Temple Committee, AIR 1952 SC 245.

> *"Right of entering the temple…is a legal right in the true sense of expression but it can be exercised subject to restrictions which the temple committee may impose in good faith…for ensuring proper performance of customary worship."*

Section 15A of the Travancore Cochin Hindu Religious Institutions Act, 1950, the provisions of which formed the basis for the finding of the temple in this dispute as a public temple, limits the functions of the Board "*to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly*." Thus, it seems that the learned judge contradicts himself at this juncture. The view on constitutional morality seems to rectify this defect. The limitations under Article 25 include public order, morality and health, and all the judges had limited the discussion to public morality. The discussion on public morality is rather interesting. Deepak Mishra, J. opinion concurred by R.F. Nariman, J. equated public morality to constitutional morality. Even when doubt exists as to the veracity of this conclusion, from the observations in *Manoj Narula*,[7] wherein it states that the traditions and conventions have to grow and sustain the value of constitutional morality, it is clear that constitutional morality can form some force for reshaping traditions. This idea is further backed by SC's finding in *Navtej Singh*[8]wherein the Supreme Court acknowledges the diversity of thought and aspirations but insists on non-abridgement of others' rights, upholding the principle of constitutional morality.

D Y Chandrachud J. even goes on to reject the 'prevailing social conception' test of evaluating public morality which has been propounded in the context of Article 19. He goes on to develop the concept in terms of justice, liberty, equality, and fraternity. The learned judge purports an exalted value to 'dignity' and identifies constitutional morality as a resort to ensure it and hence opines: "*The founding faith upon which the Constitution is based in the belief that it is in the dignity of each individual that the pursuit of happiness is founded*". Furthermore, Justice Chandrachud's analysis of Article 25(2) is pertinent, according to him the provision does not place a positive duty on the State to throw open Hindu religious institutions of public nature to all sections of Hindus, analysed with the historical background in which the Constituent Assembly drafted it, it shows that the Assembly intended to protect the State's measures in enforcing constitutional mandates by circumscribing Article 25. Thus, the respected judge explains the tenets

[7] Manoj Narula v. Union of India, (2014) 9 SCC 1.
[8] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

of religious freedom in correlation with constitutional morality. It is maintained that the individual right of freedom of religion is subject to the overriding constitutional postulates of equality, liberty and personal freedoms under Part III.

On the other hand, Indu Malhotra J. maintains that the right to worship is to be predicated based on the affirmation of a belief in the particular manifestation of the deity in the temple. This seems to be an argument formed out of the premise of identification of faith as a 'standard form contract' wherein if one does not intend to believe the faith as it is, they cannot exercise the claim of their right. An interesting observation would be: "*The right to gender equality to offer worship to Lord Ayyappa is protected by permitting woman of all ages, to visit temples where he has not manifested himself in the form of a 'Naishtik Brahmachari', and there is no similar restriction in those temples*." The underlying concept behind this proposition is that the right to worship doesn't include the right to worship at any and every place of worship, as propounded in *Ismail Faruqui*,[9] though the matter has not been cited or referred to. But in this regard, a distinction is to be made, in *Ismail Faruqui*, such a conclusion was made as it involved the acquisition of place of worship effectively denying the opportunity to all persons of a particular religion whereas such a proposition doesn't stand good when one section of the community is allowed entry while a counterpart is denied the same right.

Even when according to Indu Malhotra, J. constitutional morality means achieving the objects contemplated in the Constitution, she believes that the notions of rationality cannot be invoked in matters of religion by courts. This seems outwardly contradictory but a close introspection leads to the conclusion that such a deduction is made on the identification of 'pluralistic nature' and 'secular polity' as few elements that are intended to be protected by the Constitution. This leaves us in a dilemma of ranking dignity and pluralism based on the importance that the Constitution ascribes to each.

The majority judgment favoured the entry of women of the impugned age group on the ground that such a restriction does not qualify as an 'essential religious practice'. What constitutes an essential religious practice must be determined concerning its doctrines, practices, tenets, historical background, etc.[10] Thus, the taking away of such a practice, if it results in a fundamental

[9] Ismail Faruqui v. Union of India, (1994) 6 SCC 360.
[10] Commr., Hindu Religious Endowments v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt, AIR 1954 SC 282.

change to the character of the religion, then it is an essential practice.[11] Citing *Ratilal Panachand Gandhi*,[12] Indu Malhotra J. identifies essential religious practice as those which are claimed to be so. This, the author finds an incorrect proposition of law as later judgments including the latest decision in *Shayara Bano*[13] allow judicial reasoning in this regard. The learned judge relies on Sheervai's comment on *Shirur Mutt*: "*what is 'superstition' to one section of the public may be a matter of fundamental religious belief to another*." The author does not dispute this ratio but points out that this, along with other authorities cited, discussed this proposition with reference to the rights of religious denominations. However, herein, it cannot be satisfactorily concluded that Indu Malhotra, J. succeeds in establishing Lord Ayyappa worshippers as a separate religious denomination.

In the discussion relating to the question of whether Sabarimala pilgrims form a religious denomination, the author aligns with the decision of the majority that ruled in negative. The discussion on religious denomination leads us to a much interesting question as to whether one can be a part of more than one religious denomination at the same point in time. Going by the minority judgment, the answer should be in affirmative, in which the author finds a dilution of the settled rules on denominations. The idea of a denomination entails the existence of common faith, the satisfaction of which seems impossible when one simultaneously believes in another faith too.

One of the laudable findings made by Chandrachud J. is on 'untouchability'. Adhering to usage in Article 17, untouchability of 'all forms', the judge deviated from the previous Supreme Court judgments that confined the concept of untouchability to caste-based exclusions. Overthrowing the reasoning made in the precedents limiting the scope of untouchability, Chandrachud J. identified the notions of "purity and pollution" as the sustaining force of untouchability and found it to be against the tenets of dignity and constitutional morality.

Even when the majority judgment conforms to the transformative vision of the Constitution, the public sentiment has made it impracticable to enforce. Thus, the question arises as to whether public sentiments and the practicability of enforcement are to be considered while exercising the judicial process. At times, as Cardozo himself has pointed out, judges will have to

[11] Seshammal v. State of Tamil Nadu, AIR 1972 SC 1586.
[12] RatilalPanachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[13] ShayaraBano v. Union of India, AIR 2017 SC 4609.

use knowledge, other than that relating to law and including the experiences from life, to address a social issue. This may be seen as judicial activism as it exists today. However, consideration of public sentiments may gain popularity to the judge but may cause serious damage to the principles of the rule of law. The recent incident of police encounter of a person accused of rape challenges the sanctity of the legal conscience and is nothing less than a move instigated by popular will. Constitutional morality also calls for respect for governmental organs and the democratic process.

ACCESS DENIED: THE SUPREME COURT AND KASHMIR'S INTERNET CRISIS

By Manthan Nagpal and Vasanthi Hariharan[1]

INTRODUCTION

The impact of the COVID-19 pandemic is devastating for both life and livelihood globally. While India combats the novel coronavirus, a significant percentage of the world population in India is currently under lockdown[2] and as a result, it continues to face threats to national security from terror modules[3] in some areas of the Union Territory of Jammu and Kashmir. Citing the apprehension of misuse of the internet for propagating and inciting terror activities through the spread of misinformation, the government has continually imposed restrictions on access to the internet in the region.

In January 2020, the Supreme Court of India (SC) had the opportunity to decide on a challenge to the longest internet shutdown in a democracy[4] in *Anuradha Bhasin v. Union of India*[5] (hereinafter '*Anuradha Bhasin*'), and issued directions that the imposition of restrictions on the internet must be carried out proportionately. In addition to the rules concerning the suspension of internet services, the SC stressed on a periodic review and non-permanence of such orders. Most importantly, the Court held that the "freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g) of the Constitution of India".

THE CHALLENGE TO MOBILE INTERNET RESTRICTION

Post *Anuradha Bhasin*, orders regarding the suspension of telecom services in the region were reviewed and renewed with adjustments. These new orders that restricted mobile internet speed to

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[2] Nikhil Imamdar, *Coronavirus lockdown: India jobless numbers cross 120 million in April*, BBC NEWS (Mumbai) May 06, 2020; https://www.bbc.com/news/world-asia-india-52559324.
[3] Safwat Zargar, *Kashmir: Amidst Covid-19 lockdown, security operations in Valley continue – as do militant attacks*, SCROLL (Kashmir) May 08, 2020; https://scroll.in/article/961325/kashmir-amidst-covid-19-lockdown-security-operations-in-valley-continue-as-do-militant-attacks.
[4] The Wire Staff, *Kashmir: Indefinite Suspension of Internet Not Permissible, Review Orders in a Week, Says SC*, THE WIRE (New Delhi) January 10, 2020; https://thewire.in/law/supreme-court-kashmir-internet-suspension-judgment.
[5] Anuradha Bhasin v. Union of India, 2020 3 SCC 637.

2G in the whole of the Union Territory of Jammu and Kashmir were challenged before the SC in *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir*[6] (hereinafter '*Media Professionals*') as being violative of the directions laid down in *Anuradha Bhasin* and the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (hereinafter 'the Suspension Rules'). In the order dated 11th May 2020[7], while observing that the submissions of the petitioner regarding the violation of fundamental rights merit consideration in ordinary circumstances, the Court reiterated that the "compelling circumstances of cross border terrorism in the Union Territory of Jammu and Kashmir, at present, cannot be ignored". Reflecting on the national character of the concerns at the border that have merited these restrictions, the Court constituted a Special Committee, in place of the Review Committee provided for in Rule 2(5) of the Suspension Rules[8], to look into the prevailing circumstances and immediately determine the necessity of continuing the impugned restrictions.

VALIDITY OF ORDERS UNDER THE SUSPENSION RULES

Ordinarily, the Committee constituted under the Suspension Rules is supposed to meet within five working days of the issuance of the order and decide whether the directions are in accordance with Section 5(2) of the Indian Telegraph Act, 1885[9]. However, in *Media Professionals*, the SC has neither asked the Special Committee to report back nor imposed any timeline for the periodic review of such orders, as mandated by *Anuradha Bhasin*, while dismissing the petitions. In addition to this, the Court did not deliberate on whether the orders restricting mobile internet speed all over the Union Territory of Jammu and Kashmir stand strong against the tests laid down in the Suspension Rules and *Anuradha Bhasin* that expressly observed that all orders passed under the Suspension Rules are subject to judicial review.

This judgment exposes a hands-off approach adopted by the SC while dealing with an important clash between disproportional restrictions in the name of national security and the protection of the fundamental rights guaranteed by the Constitution. In *GVK India Ltd. v. The Income Tax Officer & Anr.*[10], the SC observed that while judicial restraint is necessary for dealing

[6] Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr., 2020 SCC 453.
[7] *Ibid.*
[8] Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, Rule 2(5).
[9] Indian Telegraph Act, 1885, § 5(2), No. 13, Acts of Parliament (India).
[10] GVK Inds. Ltd. v. The Income Tax Officer and Another, 2011 (3) SCALE 111.

with the powers of another branch of government, it cannot imply the abdication of the judicial responsibility to ensure that legislative and executive powers are exercised within the bounds of the Constitution. In the present case, the evident denial of the SC to decide on the validity of the orders imposed under the Suspension Rules and delegation of duty to the Special Committee amounts to an abdication of such responsibility.

CONSTITUTION OF THE SPECIAL COMMITTEE

The grounds that led to the substitution of the Review Committee with a Special Committee were that the Review Committee would not be able to address the issues raised satisfactorily since it consisted only of State level officers. The Special Committee that is directed to be formed by the Supreme Court consists of:

1. The Secretary, Ministry of Home Affairs (Home Secretary), who will also act as the Head of the Special Committee**.**
2. The Secretary, Department of Communications, Ministry of Communications, Government of India.
3. The Chief Secretary, Union Territory of Jammu and Kashmir.

Further, the Special Committee constituted by the SC is starkly different from the Review Committee particularly because it includes the Secretary, Ministry of Home Affairs. The constitution of the Review Committee provided by the Suspension Rules is as follows:

1. When constituted under the order of the Central Government
    a. Cabinet Secretary (Chairman)
    b. Secretary to the Government of India In-Charge, Legal Affairs
    c. Secretary to the Government, Department of Telecommunications
2. When formed under the order of State Government
    a. Chief Secretary
    b. Secretary Law or Legal Remembrancer In-Charge, Legal Affairs
    c. Secretary to the State Government (other than the Home Secretary)

Rule 2(1) of the Suspension Rules[11] provides that an order for internet shutdown can be made by or under the authority of the Secretary of Home Affairs, Government of India (when passed by the Central Government) and the Secretary to the State Government in-charge of the Home Department (when passed by the State Government). As per Rule 2(5), The Secretary of Home Affairs, Government of India is not included in the Review Committee formed by the Central Government. Further, the Secretary to the State Government (Home Affairs) is explicitly excluded from the Review Committee of the State Government. Reading Rule 2(1) and 2(5) of the Suspension Rules, the intent of the law becomes evident i.e. the authority which passes the order cannot review that particular order, which is also in consonance with the principle of *nemo judex in causa sua*[12].

Per the order of SC in *Media Professionals*, the Secretary of Home Affairs, Government of India will now sit at the helm of the substituted committee that will be reviewing the order restricting internet speed. As a direct consequence, the same office which had a hand in imposing the internet restrictions in the region earlier and had been excluded from reviewing such orders is now the *de-jure* head of the Special Committee. The intent of the review committee as per *Anuradha Bhasin* is to ensure whether such restrictions are in line with the Suspension Rules and standards of proportionality. The SC by enabling the same office of the executive branch to review its own order has defeated the purpose of the Review Committee. The result of this order will therefore be a clear violation of *nemo judex in causa sua*, where the executive will act as a judge in its own cause.

CONCLUSION

The *Media Professionals* case was an opportunity for the Supreme Court to apply the principles laid down in *Anuradha Bhasin* and crackdown on arbitrary and disproportionate restrictions on access to the internet. Unfortunately, this did not materialize and the Government of Jammu and Kashmir once again renewed the order for the temporary suspension of telecom services on 11th May 2020[13] without any mention of the observations of the SC in *Media Professionals.* This order

[11] Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, Rule 2(1).
[12] A.K. Kraipak v. Union of India, AIR 1970 SC 150.
[13] Home Department, Government of Jammu and Kashmir, Temporary Suspension of Telecom Services Order, Home -48 (TSTS) of 2020 (May 27, 2020).

was further renewed without any reference to the Special Committee and prompted the filing of a contempt petition[14]by Foundation for Media Professionals on 9th June 2020 wherein the petitioner prayed for the initiation of contempt proceedings against the Secretary, Ministry of Home Affairs, Government of India and the Chief Secretary, Union Territory of Jammu and Kashmir for willful disobedience. Alongside the petition, an application seeking the constitution of the Special Committee, a quick decision as per *Media Professionals*, and the restoration of 4G internet services in the region in the interim was filed.

With successive orders being passed in the region, extending the internet restrictions and briefly suspending even 2G data services in Pulwama[15] and Shopian[16], among other regions, encounters between security forces and terrorists followed[17]. It was only after the initiation of contempt proceedings and directions from the SC to consider the possibility of restoring internet services during these proceedings, did the government order dated 16th August 2020[18] reflect the constitution of the Special Committee and allowed for "lifting restrictions on high-speed internet connectivity on a trial basis" in the districts of Ganderbal and Udhampur while limiting internet speed in other districts.[19]While this is a positive step towards bringing the region online, the approach of the Special Committee and the SC seems to be based on the belief that there is a direct causal relationship between access to the internet and instability in the region, which is worrisome.

While issues of national security are of great importance, measures of the government must still adhere to reason and the principles of the Constitution. In this age of technology, access to the internet cannot be restricted either by reducing the speed of the internet or effectuating a complete blackout without considering whether such measures will be effective and proportionate to the

[14] Live Law News Network, *Foundation Of Media Professionals Files Contempt Petition In SC Over Non-Constitution Of Special Committee To Review J&K Internet Curbs*, LIVE LAW (June 9, 2020); https://www.livelaw.in/top-stories/foundation-of-media-professionals-contempt-petition-over-non-constitution-of-special-committee-jk-internet-curbs-158053?infinitescroll=1.
[15] Home Department, Government of Jammu and Kashmir, Temporary Suspension of Telecom Services Order, Home - 60 (TSTS) of 2020 (June 4, 2020).
[16] Home Department, Government of Jammu and Kashmir, Temporary Suspension of Telecom Services Order, Home - 65 (TSTS) of 2020 (June 17, 2020).
[17] Trisha Jalan, *Internet speeds will continue to be restricted to 2G in Jammu & Kashmir*, MEDIANAMA (June 18, 2020); https://www.medianama.com/2020/06/223-2g-restriction-jammu-and-kashmir-continues/.
[18] Home Department, Government of Jammu and Kashmir, Temporary Suspension of Telecom Services Order, Home - 91 (TSTS) of 2020 (Aug 16, 2020).
[19] Mudasir Ahmad, *After More Than a Year, 4G Restored in Two J&K Districts on a 'Trial Basis'*, THE WIRE (Aug 17, 2020); https://thewire.in/government/jammu-kashmir-internet-4g-services-ban-lifted.

danger posed. By arguing that misinformation will incite violence, the measures adopted have unreasonably restricted communication. The intent of controlling the spread of fake news and misinformation essentially remains unachieved even when 2G data is provided, leaving us to conclude that this measure goes beyond an ineffective policy decision, and demonstrates the abuse of power.